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CHAPTER I.

To

His Excellency the Governor-General of India in Council.

May it please your Excellency,

This Committee was constituted by the Government of India's resolution No. 281-F., dated the 21st May, 1931.

2. It consisted originally of the following nine members :—

The Honourable Mr. Justice Niamatullah, President.

Major A. E. B. Parsons, C.B.E., D.S.O.

Major the Honourable Nawab Sir Muhammad Akbar Khan, K.B.E., C.I.E.

Khan Bahadur, Khan Abdul Ghafur Khan, Khan of Zaida.

Mian Shah Nawaz, C.I.E., M.L.A., Bar-at-Law.

Doctor Zia-ud-Din Ahmad, C.I.E., M.L.A.

Rai Sahib Mehr Chand Khanna.

Mr. Hukam Chand, B.A., LL.B., Bar-at-Law.

Mr. Muhammad Jan Khan, M.A., Bar-at-Law.

Mr. H. W. Hale, B.Sc., acted as Secretary to the Committee.

3. The Committee was directed by the terms of reference :—

" (*a*) To examine the body of law contained in the five Regulations cited below and its relations to conditions prevailing in the North-West Frontier Province,

" (*b*) To investigate the administration of the five Regulations in the settled districts of the North-West Frontier Province, and in particular the administration of the Frontier Crimes Regulation of 1901, and

" (*c*) To recommend how far it is expedient to retain, modify or repeal (or, in the case of the North-West Frontier Security Regulation, 1922, to re-enact) the provisions of the five Regulations with due regard to the public interests of the North-West Frontier Province and of India as a whole."

" *The five Regulations.*

(1) The Frontier Crimes Regulation of 1901.

(2) The North-West Frontier Murderous Outrages Regulation of 1901.

(3) The North-West Frontier Security Regulation of 1922.

(4) The North-West Frontier Province Public Safety Regulation of 1931.

(5) The North-West Frontier Province, Law and Justice Regulation of 1901."

4. After its public sittings in Peshawar, which concluded on 10th July 1931, and before it started its final deliberation, Major Parsons was suddenly taken seriously ill and could not rejoin the Committee, and on the 7th July Major the Honourable Nawab Sir Muhammad Akbar Khan, K.B.E., C.I.E., left this Committee to attend the Army Retrenchment Sub-Committee and did not rejoin us. Accordingly we, the remaining seven members, submit our report.

The sittings of the Committee commenced on the 25th May 1931. After a brief survey of the regulations a questionnaire in English, Urdu and Pushtu (Appendix I), embracing all the important aspects of the regulations, was issued to leading men, official and non-official, to representative institutions, and the press, in the North-West Frontier Province, inviting expression of opinion on the points raised in the questionnaire and others. The public were invited through the English and Vernacular Press to express opinions on important questions which were engaging the attention of the Committee.

In all one hundred and thirty-nine replies to the questionnaire were received, besides four letters purporting to be from certain individuals urging repeal of the Regulations. Eight '*mahzarnamahs*' (declarations of views), purporting to have been signed or thumb-marked by no less than 59,378 persons in all, were received from time to time in the course of enquiry, in addition to two hundred and eighty-three resolutions, passed at certain meetings, in this Province.

Having regard to the nature of the problems on which the Committee was to form an opinion, it was not necessary to call, for *viva voce* examination, a large number of those who expressed their views in writing. It was, however, considered desirable to question further such of them as were believed to have had experience of the working of the regulations and, in particular, of the Frontier Crimes Regulation. In all 12 official and 24 non-official witnesses, including Bar Associations represented by several members who are counted as one, were examined at 24 public sittings in Peshawar, the headquarters of the Committee. A sub-committee, consisting of Khan Bahadur Khan Abdul Ghafur Khan of Zaida as Chairman, and Doctor Zia-ud-Din Ahmad, Rai Sahib Mehr Chand Khanna, Mr. Hukam Chand and Mian Muhammad Jan Khan, Bar-at-Law, made a short tour of the other four districts, examining 36 witnesses who had sent replies to the questionnaire. It also paid surprise visits to certain rural areas to ascertain the views of the inhabitants of such areas.

To obtain a fairly accurate idea of the methods and conclusions of the "Council of Elders" it was considered necessary to examine not only the record of cases which witnesses cited in support of certain allegations but also all records of cases for a particular period. Accordingly, we summoned all records of cases from fifteen villages of each Tahsil in the province decided during the last ten years, from 1921 to 1930. This particular method was adopted as we were informed that in the record-room cases had been so arranged that there was one separate bundle for each village. The villages were not named by the Committee, and the selection of them was left to the local officials. The Committee examined, through individual members, a large number of cases, and made short narratives, 242 in number, of all the Criminal cases decided under section 11, Frontier Crimes Regulation, which had been sent for. Such narratives have been made part of the record of evidence and 25 have been made to form Appendix III to this Report.

We place on record our appreciation of the assistance which Major Parsons, with his experience and personal knowledge of the Province, afforded to us during the enquiry, and of the courtesy he invariably displayed to all the members.

We take this opportunity of acknowledging the unvarying courtesy and consideration shown by the Local Administration and the willingness, on the part of all district authorities and staff, to assist and facilitate the work of the Committee.

We also place on record our great appreciation of the valuable services of our Secretary, Mr. H. W. Hale, B. Sc., I.P., whose careful and methodical supervision, enabled the Committee to have the benefit of an efficient office and to have its programme carried out without loss of time. We are also indebted to him for the statistics which he compiled from a number of reports requiring careful examination.

CHAPTER II.

The most important of the Regulations to which the present enquiry relates is the Frontier Crimes Regulation (No. 3 of 1901). Before making a detailed examination of its provisions it seems necessary, for a correct appreciation of the succeeding portions of this report, to mention at the outset, its salient features, so as to give a general impression of the Regulation and the implications arising from it.

The provisions of the Frontier Crimes Regulation may be conveniently classified as those relating to :—

(1) Trial of cases, which may be sub-divided as—

(*a*) Trial of civil cases (Chapter III, sections 8 to 10).

(*b*) Trial of persons accused of specific offences (Chapter III, sections 11 to 20) ;

(2) Proceedings against persons and communities alleged to be guilty of certain misdemeanours, not dealt with as specific offences (Chapter IV) ;

(3) Preventive measures in certain cases, including those of apprehended crime (Chapter V) ;

(4) Revisions (Chapter VI) ; and

(5) Incidental powers exercisable by the Deputy Commissioner (Chapter VII).

(1) (*a*) *Trial of civil cases.*—The Deputy Commissioner is empowered to take cognizance of any civil dispute, regardless of its nature and of the value of the subject matter involved, on receipt of a police report or other information, which satisfies him that there is a likelihood of a breach of the peace in consequence of a civil dispute, or where one of the parties to such a dispute belongs to a " frontier tribe ", he may refer such a dispute to a ' Council of Elders ', otherwise known as a " jirga ", consisting of three or more persons out of a list maintained in his office ; and on receipt of the finding of the Council of Elders he may pass a decree, which is declared to be conclusive between the parties as regards the subject matter of the dispute. Once the Deputy Commissioner decides to take cognizance of a civil dispute in the manner aforesaid, the jurisdiction of the civil court is ousted, except as regards cases then pending. In disposing of a civil case the Deputy Commissioner and the Council of Elders are not bound by any substantive law or rules of procedure. They can disregard the law of limitation and may decide contrary to the provisions of the personal law of the parties. The decree passed by the Deputy Commissioner is not open to appeal. It can, however, be revised, within defined limits, by the Commissioner. Correctness of the decree thus passed by the Deputy Commissioner cannot be challenged in a regular suit subsequently instituted in a civil court.

If the Deputy Commissioner is not satisfied with the finding of the Council, he may refer the case to the same Council for reconsideration or to a second Council for a fresh decision, but the Deputy Commissioner cannot himself arrive at his own decision. The Council of Elders is not required to maintain any record of evidence on which it acts and no legal practitioner is allowed to appear for any of the parties at any stage of the proceedings before the Deputy Commissioner or Council of Elders.

(*b*) *Trial of persons accused of specific offences.*—The Regulation empowers the Deputy Commissioner, where he thinks it expedient, to exclude the jurisdiction of an ordinary criminal court and to commit the accused for trial to the Council of Elders. The reference to the Council may be made at any stage of the case, before the case reaches the Magistrate's court or in course of Magisterial proceedings. While proceedings are pending in a sessions court, it is open to the Deputy Commissioner to have the case withdrawn at any time before delivery of judgment (the Sessions Judge having no power to refuse permission to withdraw) and to have it committed to a Council of Elders. Where evidence is found to be insufficient for conviction in a court of law, or where it is sufficient, if believed, but is not likely to be accepted as reliable by a court of law, the case may be referred to a jirga. The police and magistrates, when they feel that the case is likely to collapse in a court of law, for want of sufficient or reliable evidence, can suggest that the Deputy Commissioner make a reference to a Council of Elders.

The Council of Elders consists of at least three and ordinarily of four persons, chosen by the Deputy Commissioner for each case. The accused or the complainant has no effective voice in the selection of the personnel of the jirga, except in so far that the accused may take objection to any particular person nominated by the Deputy Commissioner to act on the tribunal. It is open to the Deputy Commissioner to allow the objection to prevail or to reject it. The Council of Elders is drawn from various villages, more or less distant from the residence of the parties. Men of the same village or locality to which the parties belong can be appointed, but are seldom chosen, as they generally have leanings on one side or the other.

In arriving at a finding on the question of the guilt or innocence of the accused, the Council are wholly independent of rules of evidence or procedure. They can act on hearsay and belief expressed on oath or otherwise by one or more persons, whatever may be the nature of the offence. They may resort to secret enquiries, the result of which need not be communicated to the accused or to the Deputy Commissioner. Cases of murder and other serious offences can be, and are frequently, disposed of on such evidence, provided it carries conviction to the mind of the Council.

The tribunal is not bound by the Regulation to keep any record of its proceedings. It may reduce to writing any information received from any source. The accused is not of right entitled to put any question to any of the witnesses; he can only make his own statement. The Council may, as a matter of practice, allow the accused to put questions. Before the Regulation of 1901 was passed the accused was not even required to be present at the enquiry before the Council of Elders and was to remain in the lock-up, where he could be interviewed by the Council of Elders, if they so desired. The Regulation of 1887 was, in this respect, modified in 1901.

The accused cannot be represented by a legal practitioner before the Council, in fact, not even before the Deputy Commissioner, at any stage, either when he makes the reference or subsequently when he passes his final order on receipt of the finding arrived at by the Council. The Council can only give a verdict of guilt or innocence of the accused, but cannot sentence him. The Deputy Commissioner may, on receipt of the finding submitted by the Council, convict, acquit or discharge the accused; or he may remand the case for further finding or refer it to a second Council.

In sentencing the accused, the Deputy Commissioner can award, except in cases of murder, not only the sentence provided by the Indian Penal Code or other enactment which makes the offence punishable, but also sentence the offender to enhanced punishment, by adding the sentence of fine or whipping in every case, except for certain offences notably sedition and allied offences and bigamy. The maximum sentence, to which a person found guilty of murder is liable under the Regulation, is one of imprisonment for 14 years. Any sentence exceeding 7 years' rigorous imprisonment requires confirmation by the Commissioner.

There is no appeal from the order of the Deputy Commissioner convicting, acquitting or discharging an accused; indeed, from any of his orders under the Regulation. He may, however, himself set aside his own order of discharge within two years. It is to be noted in this connection that there is no test by which acquittal may be distinguished from discharge. Apparently it is acquittal or discharge according as the Deputy Commissioner describes it to be one or the other.

The Commissioner has a limited power of interference in revision, on the ground of a material irregularity or defect in the proceedings or a miscarriage of justice. He cannot, however, set aside a finding of fact come to by a jirga.

Where a fine is imposed on an accused belonging to a "Frontier tribe" the Deputy Commissioner may, on the recommendation of the Council of Elders, recover it from the relations or fellow tribesmen of the accused.

(2) *Proceedings against persons and communities alleged to be guilty of certain misdemeanours, not dealt with as specific offences.*—There are provisions specifically directed against "Frontier tribes" or members thereof acting in a hostile manner. The Deputy Commissioner may, in such cases, seize them or their property and confiscate it wherever found in the British territory. He may debar them, from entering into, and access to, British territory. If the

expression " Frontier tribe " (which is not defined and is vague), is not applicable to British subjects residing in British territory, the provisions confer exceptional powers to be exercised against aliens practically at war with the British Government.

The Deputy Commissioner is empowered to fine a village as a whole or part of it, if he believes that the inhabitants thereof connived at or abetted the commission of an offence, or failed in the discovery or arrest of the offender, or connived at the escape of an offender or suspected offender, or suppressed evidence. He may, likewise, fine the whole village or part thereof, if within that area a person has been dangerously wounded or the body is found of a person believed to have been unlawfully killed, unless it is proved that there was no remissness on the part of the person or persons seeking exemption from the fine, the onus lying on such person or persons. The Deputy Commissioner need not record any evidence, nor is any necessity, so long as he is in possession of information which satisfies him that the inhabitants are liable.

There are drastic provisions, including orders of forfeiture of remission of revenue and public emoluments, for recovery of fines, as if it were Government revenue.

A person carrying arms in suspicious circumstances, and taking precautions to elude observation or evade arrest at night within Cantonment and Municipal limits, is liable to be sentenced to 5 years' rigorous imprisonment.

A married woman, guilty of sexual intercourse with a person who is not her husband, is liable to be sentenced to 5 years' rigorous imprisonment.

(3) *Preventive measures in certain cases, including those of [illegible] crime.*—The Government is empowered to order, for military reasons, the removal of any village in proximity of the frontier to another site within five miles of the previous site, and to award such compensation as appears to it to be just. Its direction in this respect is conclusive.

No new hamlet or village habitation can be erected within five miles of the frontier without the Commissioner's previous sanction.

No new ' hujra ' or ' chawk ' (common male apartment for a village or part thereof) can be erected nor can an already existing building be used as such without the Deputy Commissioner's written permission.

The Deputy Commissioner can order demolition of a building which, in his opinion, is habitually used as a rendezvous or otherwise by bad characters.

The Deputy Commissioner can fine a village community for failure to provide the customary watchmen, and the fine can be recovered like Government revenue.

The Deputy Commissioner can expel from, or intern within, the North-West Frontier Province a person who is, in his opinion, a dangerous fanatic or belongs to a frontier tribe and has no ostensible means of subsistence, or has a bloodfeud or has occasioned a cause of quarrel likely to lead to bloodshed.

Private individuals are empowered to arrest persons guilty of cognizable offences in certain cases other than those referred to in the Criminal Procedure Code.

A Police officer can arrest, without warrant, a person accused of an offence under section 498, Indian Penal Code.

The Deputy Commissioner is empowered to order a person to furnish security for good behaviour, or keeping the peace for a period not exceeding three years, if he thinks it necessary to do so, for preventing a murder, culpable homicide not amounting to murder or dissemination of sedition. He is, likewise, competent to order, on the recommendation of a Council of Elders, all or any of the members of families between whom a blood-feud exists or is likely to come into existence, to furnish security for a period not exceeding three years.

The Deputy Commissioner is not bound, in any case, to require a person proceeded against to show cause why an order should not be passed to his prejudice, though he may do so if he thinks fit. He need not record, or hear, evidence, and may act on the police report or other information.

(4) *Revisions.*—No appeal lies from any order passed by the Deputy Commissioner in any case. The Commissioner can interfere in the exercise of his

revisional power, but has no authority to set aside the finding of fact arrived at by a Council of Elders, except in cases of material irregularity or miscarriage of justice.

(5) *Incidental powers exercisable by the Deputy Commissioner.*—These require no special mention.

It cannot be denied that the powers conferred by the Frontier Crimes Regulation on the executive authorities, and briefly described above, are as extensive and as free from judicial control as they could possibly be. How far such extensive powers may be exercised for the good of the people or otherwise must largely depend on the personal factor in the administration of a district. The disparity between this system and that obtaining in the rest of India is so great that only a correspondingly great divergence of the conditions in the two can justify them.

CHAPTER III.

The outlines of the Frontier Crimes Regulation, as given in the preceding chapter, provoke the enquiry as to why it should have been found necessary to enact a regulation which, to say the least, is out of the common, inasmuch as it established a dual system of administration of civil and criminal justice. Side by side with the laws and the machinery for enforcing those laws, the Regulation has brought into existence a parallel organization of the nature described. To find the reason which led to the passing thereof, we must take a retrospect of the conditions which were originally held to justify it.

There are three important landmarks in the history of the present Frontier Crimes Regulation, first, when the Regulation of 1871 was passed, next when the Frontier Crimes Regulation of 1887 was enacted with drastic provisions, and lastly when it was re-enacted in 1901 with still more drastic provisions.

The first regulation (1871) contained about a dozen simple rules, which for facility of reference are reproduced in Appendix IV to this report. There was no provision for trial of civil cases by the Deputy Commissioner. In criminal cases he had no power other than that of making reference to a 'Council of Elders' in cases in which "a person is accused of murder or other heinous offences, and sufficient proof is not forthcoming for judicial conviction". The Elders could decide the case themselves, but could not pass any sentence other than one of fine.

From this small beginning it has assumed its present proportions. On each occasion when its provisions were made more stringent, the reason assigned was the same, *viz.*, the increase of the number of murders and other offences involving violence.

After annexation in 1848, the settled districts remained subject to the ordinary civil and criminal laws in force in British India till 1871. Authentic statistics of crime between 1849 and 1871 are not available, nor were any referred to in the letter of the Lieutenant-Governor proposing the Regulation of 1871. But we have found the following useful information on the subject in Mr. Elsmie's "Notes on Crime and Criminals on the Peshawar Frontier":—

"At the time of annexation of the Punjab in the year 1849-50, murders or crimes accompanied by murder are said to have been committed at the rate of one per diem in the Peshawar District. I have not been able to procure any trustworthy statistics for the first three years of our administration, but there is the authority of Major James, late Commissioner of the Division, for the statement that 139 murders took place in 1851. (Judicial Commissioner's Annual Criminal Report for 1860, paragraph 186.)

"The first annual returns of crime ever furnished for the Peshawar Division were those for the year 1853. The Judicial Commissioner in his report for that year wrote. (Judicial Commissioner's Criminal Report for 1853, paragraph 400.)

"Towards the close of 1853 a bare statement of the number of crimes that occurred in the Peshawar District during the year 1852 was supplied.

"The amount of crime it exhibited was quite appalling and showed that in the Peshawar valley every species of crime was perpetrated on an extended scale.

"The number of murders in 1852 was 72, in 1853 it was 83. The Judicial Commissioner regarded the returns for that year as exhibiting a 'fearful array of crime.' (1852-1861 Judicial Commissioner's Criminal Report for 1853, paragraph 409.)

"Passing over the years 1854, 1855, 1856, 1857, 1858, it appears that considerable improvement had taken place in 1859. The Commissioner, Major James, then wrote (Judicial Commissioner's Criminal Report for 1859, paragraph 482) : 'The number of violent crimes has annually decreased as much as can be expected on this border'.

"The number of murders had fallen from 83 in 1853 to 43 in 1859. In 1860 there were 44 murders. In 1861 no material change seems to have taken place.

"In the next six years the numbers were as follows (1862-1872 Report of Inspector-General of Police for 1871, paragraph 40) :—

Year.	Murders.
1862	43
1863	27
1864	55
1865	65
1866	65
1867	67

"In 1868, however, the number rose to 80, in 1869 it fell to 73, but during 1870, 1871 and 1872, the number of murders was 92, 93 and 103, respectively". (Chief Court's Criminal Reports for 1869, 1879, 1871 and 1872.)

The figures given in the above extract pale into insignificance when we compare them with those of recent years. It is, however, clear that, at the time of annexation, one murder a day or 365 in a year, was the average, and no little credit is due to the administration of laws in force between 1850 and 1871, during which period the number of murders in Peshawar District ranged between 55 to 92, except in 1868, which recorded 43. This was, however, regarded as sufficiently disquieting to induce the Lieutenant-Governor to study the conditions of the province by personal enquiries in course of an extensive tour of all the settled districts on the Frontier. The conditions found by him were described in his recommendation to the Government of India for enactment of the first Regulation of 1871. He said :—

"2. His Honor has visited in succession the districts of Dera Ghazi Khan, Dera Ismail Khan, Bannu, Kohat, Peshawar, and Hazara, and has made the fullest and most searching enquiry into the condition of the border, the efficiency of the Police and Militia, the character and amount of crime, and the relations of the tribes residing in British territory with those beyond the border. The Lieutenant-Governor has been aided in this enquiry by the experience of many frontier officers possessing great local knowledge, and had besides the advantage of consultation with Mr. J. S. Campbell, Judge of the Chief Court at Lahore, who accompanied his camp.

"The recommendation of the Honourable the Lieutenant-Governor contained in the Rules annexed to this letter are thus the result of the most careful local enquiry. If approved by His Excellency, it may, the Lieutenant-Governor believes, be reasonably hoped that their action will in no way weaken the authority of the Courts of law, while they will materially strengthen the hands of the officers who are responsible for the general peace and good management of the several districts.

"3. By proposing the accompanying Rules, the Lieutenant-Governor does not desire it to be inferred that the Frontier districts of the Punjab have become of late years more difficult to manage and their inhabitants less amenable to the laws which prevail generally in the province. The contrary is undoubtedly the case. Certain offences have, indeed, increased in a greater ratio than any increase in the population can be held to justify. Some classes of offences against property, and in the Peshawar and part of the Bannu Districts murders have largely increased ; nor in the latter case is His Honor prepared to suggest any reasonable explanation for the increase. But the inefficiency of the Police in the districts of Kohat, Bannu, Dera Ismail Khan and Dera Ghazi Khan, more especially as regards the successful prosecution of crime, has been one obvious cause of its increase. This cause, it is hoped, may be in a great measure removed by the re-organization of the Frontier Police which is now being carried out, while the re-organization of the Militia, which is also in progress, must have a good effect in checking border crime.

"4. The proposals of His Honor are not intended to meet any new condition of things in the frontier districts or to put down crime against which the ordinary processes of law had been before found sufficient, but to supply a long-acknowledged want, and to give legal effect to action which district officers have been often compelled in the interest of general tranquillity, to adopt without legal sanction. It is against border crime that the rules are directed, the circumstances of which have always been found to be in many instances ineffectual.

" 5. The Lieutenant-Governor is desirous that the character and limited scope of the new rules should be clearly understood. He does not believe, from a consideration of the proportion of non-bailable to bailable offences in the Trans-Indus and Cis-Indus districts, that any case has been made out justifying exceptional measures of general application. The bulk of the Trans-Indus population is peaceable and well-disposed, and as fitted for legal and civilized government as the population of any part of the Punjab. There is no necessity, nor is it desirable, to change the existing system of administration, to place the frontier under a system of quasi-martial law, or to relax, except in the few instances provided for in the rules, the law and procedure which prevail in the rest of the province ; nor does His Honour consider that the action of the Chief Court has had the effect, with which it has been sometimes credited, of weakening the authority of the district and divisional officers, and making the suppression of crime more difficult by increasing the chances of the acquittal of the criminal. In no part of the Punjab does the supervision of the Chief Court appear to the Lieutenant-Governor to be more needed than in the frontier districts of the Peshawar and Derajat Divisions.

" 6. What is exceptional in these districts, and demands exceptional treatment, is due to their position on a border exposed to the attack and depredations of tribes independent of our authority, and of a turbulent and vindictive disposition. It is true that the conduct of these tribes has generally of late years much improved, and, with one or two exceptions due to special causes, they are content to remain on good terms with the British Government, while many of them are abandoning their predatory habits and are occupying themselves with agriculture or trade. But it is necessary to make provision in these Rules for the hostile action of any tribe, as the case of the Mahomed Khel Waziris of the Bannu District testifies, while, however friendly the general attitude of a particular tribe may be, it is as necessary to provide against the criminal intentions of its individual members, who, in all Afghan communities, are little subject to the control of the Chiefs ".*

As already mentioned, the views thus expressed by the Lieutenant-Governor were based on the result of an extensive tour in all the districts and on enquiries into the conditions then existing, which led him to refute the suggestion that the inhabitants of the Frontier districts were less amenable to the laws which prevailed generally in the province. But he found that "some classes of offences against property, and in the Peshawar and part of the Bannu districts murders have largely increased ". There is no reference to any Pathan Code of Honour which loomed largely in the opinions subsequently expressed when the Regulation was re-enacted in 1887 with considerably as the characteristic of the " tribes in dependent of our authority ". But widened scope. " The turbulent and vindictive disposition " was mentioned as the characteristic of the " tribes independent of our authority ". But " the bulk of the Trans-Indus population is peaceable and well-disposed, and as fitted for legal and civilized government as the population of any part of the Punjab ". It was emphasised that the rules were directed " against border crime, the circumstances of which have always been exceptionable, and to suppress which the laws in force elsewhere have been found to be in many instances ineffectual."

The Regulation of 1871 was re-enacted in 1873, and again in 1876, with very minor amendments, of which it is not necessary to take notice for our purposes.

In 1871, 1872 and 1873 the number of murders was 93, 103 and 73, respectively, but in 1877 and 1878 it fell to 69 and 53, respectively. The Lieutenant Governor attributed the result to the quality of the work of the Sessions Judge, Peshawar, Mr. Elsmie, who, however, disclaimed the credit and was inclined to attribute the good result to " the introduction and judicious use of the Frontier Crimes Regulation No. IV of 1873 ".† Subsequent events showed that Mr. Elsmie was too modest in estimating his own work and had overestimated the value of the Frontier Crimes Regulation in that respect. The figures of crime in the years that followed made the satisfaction given by those of 1877 and 1878 very shortlived, as statistics for the years 1879 to 1884 (the number of murders in 1884 was 81) showed an enormous increase

*Letter No. 172-604, dated Lahore, 27th April 1871, from Officiating Secretary to the Government, Punjab, to Secretary to Government of India, Foreign Department.

†Notes on crime and criminals on the Peshawar Frontier by Mr. Elsmie, page 3.

of cases of murder and culpable homicide in the Peshawar District and the Punjab Government set about ascertaining the causes and remedies. The theory which found favour in that connection was that "the Indian Penal Code and the Criminal Procedure Code came into force in 1861, though their full effects were probably not felt for the first two or three years of their operation; the Chief Court, consisting of two Judges, was established in 1866; and a third Judge was first appointed at the close of 1869, with the greater elaboration of the judicial machinery the number of murders actually increased."!

It may be pointed out that the number of murders was much less between 1851 and 1871, before the first Regulation was passed and when ordinary laws were administered by the criminal courts of the province. Consistently with that theory, the laws and the courts referred to should have been done away with for the settled districts, as was in fact proposed; but the Lieutenant-Governor overruled the suggestion and said :—

"25. .....The measure would be unnecessarily retrograde and would, His Honour believes, tend to defeat the object in view which is to gradually train and win over popular sentiment to the side of civilized administration in the matter of protecting human life. The regular system founded on the application of scientifically framed laws is, where it can operate and where society has made some considerable advance, far more certain and therefore far more just than the looser system founded on personal and local knowledge and beliefs which naturally form a part of primitive social conditions. The Lieutenant-Governor would retain the regular system, both because he believes it to be the best system where it can be made to act and because even where it can act only in some cases and not in all, it is an instrument of popular education. The people should learn by experience that it can work successfully when they are willing to help its operation. But side by side with that system we must maintain the system of the Council of Elders with extended functions and powers to meet the specially backward state of the country, and to stop the conflict between Pathan laws of honour and the civilized jurisprudence of British Courts, which is the main cause of the whole difficulty. In this way we can supply the element of personal and local knowledge which must, in existing circumstances, be admitted as the substitute for judicial proof. Whether a case should go to a *jirga* or follow the course of appeal up to the Chief Court is mainly a matter of evidence. If sufficient evidence of a trustworthy kind is forthcoming, there is no reason for resort to the more primitive procedure. Where evidence is denied or falsified, the *jirga* is obviously the proper tribunal to deal with the case."

In forwarding the draft regulation to the Government of India, the Lieutenant-Governor of the Punjab justified the system he was proposing to introduce on grounds which may be stated in his own words. He said :—

"6. .....It is with regret that the Lieutenant-Governor records that the statistics of crime for the Peshawar District during the year 1885 show a still further increase in the number of murders, which reached 101, or a higher figure than has yet been recorded, except in the years 1851 and 1873. At the present time the Deputy Commissioner of Peshawar computes that there are as many as two thousand murderers at large in the Peshawar District; and this result is not to be wondered at when the same officer states that only one out of every six murderers is convicted. The causes which have led to this state of thing are to be found mainly in the state of society which exists on the northern frontier. Setting aside the case of murders, the criminal administration is steadily improving, and the working of the police affords little ground for adverse criticism. But according to the Pathan Code of Honour, murder under certain conditions is not a crime but an obligation. The popular feeling is either on the side of the murderer or is apathetic. Thus evidence sufficient to procure conviction under the ordinary procedure is rarely forthcoming, and when it exists is generally mixed with wholesale perjury and the implication of innocent persons, making it impossible for the Courts to convict the criminal. These conditions, which have been detailed at greater length in paragraphs 6-8 of the letter above quoted (No. 176, dated 15th February 1886, to the Officiating Commissioner of the Peshawar Division), were fully taken into consideration when the Frontier Regulations of 1872, 1873 and 1876 were passed. So far as the provisions of these Regulations

*Letter No. 176, dated 15th February 1886, from the Secretary, Government of the Punjab, to the Officiating Commissioner and Superintendent, Peshawar Division.

have enabled the local officers to deal a somewhat more rough and ready kind of justice in cases of heinous crime they have been productive of good results. Trial by jirga has often led to the conviction of persons regarding whose criminality there was little doubt, but against whom evidence would not have been forthcoming in the ordinary course. No serious cases of abuse of this jurisdiction have been brought to light ; and the unanimous opinion of the local officers is that it should be further extended ".*

The system which was being inaugurated by the Regulation was seriously challenged by Mr. Justice Plowden of the Punjab Chief Court. All the Judges of that Court strongly protested against a clause of the original bill, which proposed to associate the Sessions Judge with reference to a Council of Elders where evidence was not sufficient for a judicial conviction. The clause was accordingly so amended as to enable the public prosecutor to withdraw a case from the Court of Sessions before the passing of the final order, even after the verdict of the assessors, and to have it referred to a Council of Elders.

Some remarks of Mr. Justice Plowden on the proposed regulation may be usefully quoted. He said :—

" The general criticism to which the report and recommendations of the Committee strike me as open is that they seem to assume—

(1) That new methods based on new principles are necessary, without demonstrating that methods based upon and involving merely new applications of recognised principles must prove inadequate ; and

(2) That the criminal population of the Frontier is a class *sui generis*, differing largely in essential points from the same class elsewhere.

" As to the first matter, it is enough to observe that the proposals submitted to the Government include a new and rather startling jurisdiction by which to be a ' reputed assassin ' is constituted a highly penal offence, and the offender is liable to conviction by a Deputy Commissioner without being made aware what the evidence against him is, and by whom it is given, and, as I understand, without appeal, but subject only to confirmation by the Commissioner.

" It is also proposed to extend very largely the scope of the jurisdiction of Jirgas, and *pro tanto* to exclude the jurisdiction of the ordinary courts. This change is introduced by transferring to the Deputy Commissioner the power of punishment which is now entrusted to the Jirga, and to make the finding of a Jirga the foundation of sentences by the Deputy Commissioner, which may extend to seven years' imprisonment, instead of a fine, as at present, these sentences also not being open to appeal in the ordinary course, though liable to be revised by the Commissioner.

" I will deal briefly with these proposals presently ; but I would first point out, with reference to the second remark above made, that unscrupulous witnesses, and false evidence for the prosecution as well as the defence, are daily occurrences in criminal trials throughout the Province ; and that the population at large, elsewhere than on the Frontier, is extremely apathetic as to endeavouring to aid the executive authorities in bringing offenders to justice. In two respects, however, the Pathan criminal surpasses criminals of the ordinary type. He is more prone to take human life, and he very rarely confesses either out of court or in court ".

Dealing with the proposed provisions regarding " reputed assassins ", he makes some observations which may be applicable to other cases as well :—

" I greatly doubt the wisdom of the concurrent jurisdiction of the Deputy Commissioner and of the Jirga over cases of this kind. Apart from any personal leanings, due to the habits of official judicial life, in favour of inquiry in presence of an accused person, I share with probably most Englishmen a national prejudice against secret and underhand dealings, especially when a Judge is party to the transaction. The case is aggravated when the other party to such dealing is one of a false, unscrupulous, treacherous and vindictive class like the typical Pathan. As soon as it is known that there are two tribunals before which a man can be charged as a reputed assassin, with the

*Letter No. 440-S., dated Simla, 17th September 1886, from W. M. Young, Esquire, Secretary to the Government, Punjab and its dependencies, to H. M. Durand, Esquire, C.S.I., Secretary to the Government of India, Foreign Department.

same sentence on conviction, one of which, a single European officer, will take evidence secretly, while the other consists of several Native members, who take evidence openly before the accused, it is most likely that informers will select the former tribunal, and withhold information from the latter. This will be especially so in cases of false witnesses, in which the chances of detection of falsehood will be minimised. Given to jirga tribunals only, every *honest* informer could contrive to convey his information secretly to some member of the Jirga, a body not restrained from being influenced by information irregularly derived, and the best of them would face the Jirga openly. The less encouragement that is given to false informers the better, I venture to think, for the community and for the Government."

The Regulation of 1887 received in due course the assent of the Governor General. Its object, as stated in the heading, was "Suppression of crime on Punjab Frontier". It was administered for 14 years and in a large number of cases sentences of imprisonment not exceeding 7 years were passed on definite findings of the 'Council of Elders' that the accused had committed the offence of murder. It was realized by 1900 that figures of violent crime in general and of murder in particular had maintained a steady upward tendency and by 1898 had reached the highest limit ever recorded before. Fresh legislation was proposed; the immediate cause of the case being taken up was the "*starling increase in murders*". It was thought that a sentence of seven years' rigorous imprisonment, which alone could be passed on the findings of 'Councils of Elders,' was not sufficiently deterrent. Accordingly, it was decided to amend the Regulation of 1887 by adding more stringent provisions, notably one which empowered the Deputy Commissioner to pass a sentence of imprisonment up to 14 years, instead of 7, on the verdict of guilty returned by the Council of Elders. A Committee of three distinguished officers was constituted to draw up a new bill. Two of the members strongly opposed the limit of sentence being raised to 14 years, while the third favoured it. The Lieutenant-Governor accepted the latter's view and in disposing of the dissentient opinion of the former, namely, that the jirga system could not be trusted to that extent, he (the Lieutenant-Governor) observed as follows :—

> "With reference to the view that the jirga system cannot be trusted a great deal might be written. The system is admittedly a *pis aller*. It has been created because of the impossibility of securing convictions in a certain class of cases by the Judicial Courts, the discovery of such cases being of supreme importance to the administration, and being *ex-hypothesi* possible by means of the jirga system. Apart from the safeguards which have now been provided in the revised draft, there is one permanent safeguard, *viz.*, that the Deputy Commissioner is not obliged to convict. True, it is difficult for him to go behind the finding, but he may reject it, and ought to do so, if he is not satisfied that it is well founded. This system has, according to general opinion, been of great value, though it has not been without its inherent defects. No one suggests that it should be abolished or ventures to substitute an alternative. Its first introduction was followed by a great decrease in crime. Since 1893 crime has increased, and some are doubtful whether this may in part be due to the jirga system being discredited. Sir Mackworth Young finds no warrant for this. Violent crime has increased in other parts of the province, and the frontier disturbances of 1897 were found to produce a recrudescence of heinous cases. On the whole the experiment must be pronounced a success. His honour goes further and says that it is a clearly established success. Numbers of heinous criminals have had punishment dealt out to them who would otherwise have gone free. The conviction of the innocent may happen : it happens in the Judicial Courts : but the opinions reveal no sense of a public wrong due to the system : some officers go so far as to say that they believe failures of justice under the system rarely happen".*

In view of the object of the Regulation of 1887, as stated in the preamble thereof, namely, suppression of crime, and in view of the avowed necessity for more stringent rules, *viz.*, because "since 1893 crime had increased", it is difficult to appreciate the remark that "on the whole the experiment must be pronounced a success and that it is a clearly established success".

*Letter No. 885, dated 12th July 1900, from the Officiating Secretary to Government of the Punjab, to the Secretary to the Government of India, Foreign Department.

The Regulation of 1901 became law on the 18th September 1901 when it received the assent of the Governor General. The object of the Regulation of 1901, like that of its predecessor, recited that " it is expedient further to provide for suppression of crime in certain Frontier districts ".

About 30 years have elapsed since the present Regulation was passed and about 45 years since that of 1887, leaving out of account the first regulation of 1871, which provided for a sentence of fine only and was, therefore, of no deterrent effect. We have now to take stock of things to see if the object aimed at by the Regulation has been attained in any measure and, if not, what is the proper remedy. A glance at the statistics for the Peshawar District since 1901 will show that the number has kept on steadily increasing, the upward tendency being more marked after 1906, and phenomenal from 1917 onwards. We do not think the figures for 1917-1922 can be explained on the ground that war conditions, the aftermath of War and the non-co-operation movement were responsible for the abnormal increase, as during the years 1925-29 the number of murders is not by any means less. The number of murders in 1929 (268) is nearly three times of what it was in 1870 (*i.e.*, 92), the year immediately preceding the first Regulation, and a little less than that when compared with the number recorded in 1885, almost on the eve of the Regulation of 1887.

What is true of the district of Peshawar is, to a great extent, true of the districts of Bannu and Kohat. We have chosen Peshawar for statistical purposes as figures of crime for other districts are not available for the years between 1851 and 1870 and for some other years and as opinions expressed on the bills of 1872 and 1887 made reference to the Peshawar district only. The cases of Hazara and Dera Ismail Khan stand on a different footing. The number of murders in these districts was not very large at any time, and the increase has been no more than in any other part of India, *e.g.*, the Punjab.

How far this state of things is attributable to the Frontier Crimes Regulation is not a question which calls for discussion at this stage. The critics of the Regulation maintain that, among other reasons, sentences of imprisonment passed in a large number of murder cases every year tried under the Frontier Crimes Regulation are responsible for the increase of crime of that description. The advocates of the Frontier Crimes Regulation, while supporting the system, admit its short-coming in that sentences of death cannot be passed in cases of murder tried thereunder. Some of them desire its extension in that direction.* This attitude is perfectly logical in view of the past history already narrated. It must, therefore, be taken as common ground that the present conditions, *inter alia*, demand that in all murder cases, however tried, there should be no hindrance to the extreme penalty of the law being inflicted.

The question of extension, retention or modification of the Frontier Crimes Regulation, is, by the terms of reference to this Committee, to be considered in the light of the peculiar conditions, if any, of this province. We take it that the conditions we have to take into account are those which make a special law, like the Frontier Crimes Regulation, imperative or, at least desirable. This being so, the Committee put in the forefront of the questionnaire issued by it, the query as to what those peculiar conditions are. Every province has some conditions peculiar to itself, and the mere existence of certain conditions which are not found elsewhere or are not found to the same extent will not necessarily lead to the conclusion that a particular law should apply to it. There must be such a relation between the conditions and the law in question as to make the latter a remedy for the former.

A number of witnesses have mentioned certain conditions which exist in the province and some characteristics of Pathans who predominantly inhabit it, and though there are differences in the mode of expression, they range under one or the other of the following heads :—

(1) Proximity of the North-West Frontier Province to the independent tribal belt, which results in—

(*a*) social intercourse with tribesmen,

(*b*) fugitive criminals from British India finding a safe asylum,

(*c*) the illicit importation of arms to British territory, and

(*d*) influx of tribesmen who are unruly and not easily amenable to law, all of which tend to increase crimes of violence ;

*Messrs. J. H. Adam and O. K. Caroe.

(2) Habits of blood-feuds ;

(3) The Pathan sentiment, grandiloquently described as the " Pathan Code of Honour ", which makes him vindictive and in certain circumstances makes it a man's duty to commit murders, *e.g.*, where a man is dishonoured through sexual relations between his wife or other near female relative and her paramour, in which case the stigma can only be removed by the murder of both the offending parties ;

(4) The natural tendency frequently exhibited by Pathans to resort to violence on slight provocation ;

(5) Faction feeling which results in the suppression and manufacture of evidence in order to involve as many persons as possible of the opposite party, thus spoiling cases for the ordinary courts, and reluctance on the part of distinterested witnesses to give evidence.

(6) Existence of a class of hired assassins ;

(7) The large number of murder cases and other cases involving violence ; and

(8) The custom regarding marriages which at times lead to a breach of the peace.

The conditions thus categorically mentioned have not been referred to by any one particular witness. Each has emphasised a few of those enumerated above ; but no one has mentioned any which is not covered by one or the other of them.

Many of the characteristics referred to, are generally the outcome of the tribal system under which the people manifesting them have lived for a considerable length of time. In that stage of civilisation people cannot but avenge personal wrong by what is called taking the law into their own hands in the absence of all laws, criminal and civil, whose place is filled by certain customs loosely expressed and understood by people who are illiterate, and in the absence of any State to enforce private rights and obligations. In a society constituted on that footing the leading men of the tribe must, in the nature of things, decide all matters affecting the tribe as a whole and its corporate existence, and only incidently take cognizance of private affairs when their authority is invoked. There is no machinery by which, in such a system, the decision of " greybeards " can be enforced, except by a resort to social boycott or causing damage to the offender by burning his house or otherwise. It is inevitable, in these circumstances, that the person wronged should find redress for himself by taking a life for a life or other serious wrong, and his helplessness in that respect would be an indication of inferiority, want of courage, resources and other fine qualities of man. It follows as a corrolary that it is a point of honour to avenge one's wrong. It is only an extension of the foregoing doctrine which gives rise to what is known as blood-feud. Where one kills another, replying on the justice of his act, but the relatives of the murdered person regard it otherwise and, therefore, a wrong calling for redress, which can be had only by murdering the wrong-doer or his near relative, the second murder will, in turn, necessitate a third murder by those who regarded the first as an act of justice. The blood-feud thus created gives rise to a vendetta, which will go on *ad infinitum* for generations till good relations are restored by an amicable settlement, such as the payment of blood-money, which is not looked upon with favour, being a sign of inability to take revenge, or by the marriage of a girl of one family to a man of another. But in a society which is subject to an organized form of Government, anything resembling what has been described should have no occasion to exist. Where it is the duty of the State to punish serious crimes, and it functions for that purpose, the necessity of blood-feuds and vendettas disappears. The machinery provided by the State does what a person wronged would do for himself, if he could. Such a machinery has undoubtedly existed in this province since, at least, 1849 ; and if blood-feuds and vendettas and a feeling of revenge for heinous crimes have not disappeared, it is because they once formed part of the tribal mode of life that their ancestors led, and which has been to some extent kept alive by tradition. At the same time the influence of tradition grows weaker and weaker with the advancement towards civilisation. That a disintegration of the tribal system has taken place in the North-West Frontier Province in most respects can admit of no doubt. Even before the advent of the British Government, during the Sikh rule which lasted from 1818 to 1848, if not also during the Durrani rule before it, the tribal system was rapidly disintegrating. This was indeed inevitable in view of the introduction of a foreign government.

The process of disintegration was very rapid after annexation in 1849. The economic and administrative conditions prevailing in this province assimilated to those of the Punjab, of which it formed part till 1901. The village has been the unit for all administrative purposes, here as elsewhere : a group of villages forming a parganah, a number of parganahs forming a tahsil, and a few tahsils forming a district, with the usual hierarchy of officials, ranging from patwari and chaukidar to Deputy Commissioner and District Magistrate. Direct responsibility of the individual land-owners to the Government, criminal liability for certain acts strictly defined by the Indian Penal Code and other penal statutes, civil rights and obligations clearly marked out by laws scientifically drawn up, and a highly organized machinery for the enforcement of such rights and liabilities could not leave any room for a tribal system to function.

Groups of villages may be found inhabited by the same class of persons having the same tribal names ; but there is no community of interest of any kind between any two villages, except that their inhabitants profess the same religion and have the same social etiquette and traditions. A number of villages all inhabited by homogeneous people, for instance Jats in the Punjab or Rajputs in the United Provinces, is not an uncommon phenomena in other provinces. Within the village there are divisions and sub-divisions of tenures and fractional shares belonging to individuals. Each " grey beard " may have influence in his own family circle, as elsewhere in the country ; but apart from the respect which his position and age entitle him to, he has no authority over the younger generation of the village. It is noteworthy in this connection that, when a village is fined as a whole under section 22 Frontier Crimes Regulation, the fine has to be distributed over so many house-holders, excluding widows and orphans, the order always making a clear distribution in this behalf to avoid endless disputes in ascertaining the individual liabilities. The expression " village community " occurs in many sections of the Frontier Crimes Regulation, and the words " frontier tribe " have reference to a trans-border tribe.

It is remarkable that in rural areas the same customs are in force as regards inheritance and other allied matters as in the Punjab. They are based mostly on Hindu law, and have certainly no resemblance to Muhammadan law. Adoption is very common ; sons exclude daughters ; widows have a life-interest and reversionary interests are recognized. As already stated, a group of villages may be found to be inhabited by people of the same clan but common origin and identity of manners and customs are the only characteristics which remind one of by-gone days when they were subject to a tribal system.

It has been freely stated before us, without a serious challenge, that the Hindus and Sikhs have the same manners and mode of life as the Muslim population of this province, and are animated by the same feelings in everyday affairs of life.

In urban areas one does not find any trace of the tribal system. The population which has a fair element of non-Muslim and non-Pathan inhabitants, are hardly distinguishable from those inhabiting a Punjab town in which the Muslim element predominates.

Education, facilities of communication with the rest of India, business relations and other civilizing influences, which have been at work during the last 80 years, could not have failed to alter the social and moral ideas of the people of this province. In general advancement, except in the field of politics, they are not behind many provinces of India. If literacy is any test and we think it is an important test, they are ahead of the Punjab and United Provinces. According to the figures of the census of 1922, the percentage of literacy in this province was 3.9, while it was 3.8 in the Punjab and 3.4 in the United Provinces. Every district officer who has appeared before us has testified to many good qualities of the Pathans of this province. His manliness, hospitality and urbanity of manners, not to speak of his military achievements, are the outstanding features of his character.

The following description of the population in rural areas has been given to us by a reliable gentleman, well acquainted with rural conditions, being himself a landed proprietor and belonging to a family residing in a rural area :—

> " The Mohammadan masses in his province are fairly well-informed. They know things about their own religion. Everybody gets rudimentary education in the mosques and knows how to say his prayers. Most of them know how to read the Quran. The majority of them

> can also read Pushto, which is written in Arabic characters..... Every body who can read Pushto can also read Urdu, though he may not be able to understand the purport of what he reads .....Every village receives one or two newspapers. In every village there is a *hujra*. It is a sort of club or a guest house. All sorts of questions : social, political and economic are discussed there. My clients from rural areas exhibit considerable knowledge and intelligence in giving instructions."

In a recent pronouncement, the Honourable the Chief Commissioner expressed himself in the following terms :—

> " The people of the North-West Frontier Province claim, and I, who have spent so many years among them naturally support that claim, that they are in no way inferior to those of any other province of India or indeed of any other country in the world."*

Some witnesses referred to the tribal system as in " process of disintegration."† It is not, however, stated in what respects it still exists. What they probably imply is that manners and customs observed in ordinary domestic and social intercourse and certain social and moral ideas still persist but are undergoing radical changes. In this sense, it may be true that the tribal system is in " process of disintegration." The Police Administration Report of 1922 quoting from Mr. Adam, the then Superintendent of Police, Peshawar, and now the Inspector General of Police, states, " tribal organization amongst Pathans in the district has become more a memory than a living fact." Conditions across the border have been more or less stagnant. There the tribal system with all the concomitants, already referred to still prevails. Comparative isolation, lack of education and economic resources contributes to a state of stagnation in all walks of life. It is, however, generally admitted that serious crime prevails to a far less extent in tribal territory than in British territory, the reason being that every one is armed and retribution is sure and swift. Fear of sectional warfare following a murder has a great preventive effect. The tribal system, which is democratic, though crude, gives fewer occasions for a conflict of private interests. There are no business activities of a character which may lead to disputes. Woman, the only other source of violent crime, is subject to such rigorous rules of conduct as to minimize the chances of blood-shed.

The backward condition across the border has in no sense been a drag on the progress of the North-West Frontier Province ; but its proximity cannot fail to crease certain conditions which adversely affect the administration of this province.

With these general observations, we now proceed to consider how far each of the several conditions enumerated above exists before considering their cumulative effect on crime.

(1) (*a*) The proximity of the tribal area has the result, in many places, of a number of villages in the British territory being inhabited by people belonging to the same tribe as those residing not far away from the border. Though the administrative conditions under which the two live are materially different, a certain amount of social intercourse is inevitable, having regard to the affinity of religion and race existing between them. But those residing in British territory naturally draw their inspiration from British India, with which they are indissolubly bound up.‡ It has been mentioned, for instance, that the Yusafzai are found on either side of the border ; but there is a great difference between the British Territory section and the Tribal Territory section. The former are as advanced in education and in social and economic conditions as any community in the province ; no less than twenty of these living in the Mardan sub-division belong to the Bar of that place, besides a number of others holding respectable Government appointments.§

We have it from well-informed persons‖ that inter-marriage between the inhabitants of the British territory and tribal territory is of rare occurrence. Some families, for example, the Mohmands of Charsadda in the Peshawar District, have houses in both the territories, probably because they own land on either side of the border. They are called " dokoras ".* It is not, however, suggested that this state of things is by itself the source of any serious trouble.

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*Proclamation, dated 9th March 1931, from the Honourable the Chief Commissioner, North-West Frontier Province, to the Nawabs, Khans, Raises and other people of that Province.

†*E.g.*, Mr. Fooks, Superintendent of police.

‡Mr. Mohammad Safdar Khan, Senior Sub-Judge, Bannu.

§Mardan Bar Association.

‖Mardan Bar Association and Khan Bahadur Saaduddin Khan, Additional Judicial Commissioner.

In any case, we have found no traces of it in decided cases unless there are complications arising from the problem of outlaws.

(*b*) It is true that a large number of fugitives from justice find a safe asylum in tribal territory ; their number from Peshawar District swelled to 586 by 1930.†

Outlaws† are always a menace to peace and tranquillity in British territory. The prevalence of dacoity is attributed to the existence of a large number of outlaws, who gather around themselves accomplices from trans-border people, and commit dacoities in the British territory.‡ The critics of the Frontier Crimes Regulation make the administration thereunder directly responsible for this undesirable state of things. It is pointed out that a practice has existed to negotiate with the outlaws for conditional surrender. An undertaking is given that if they surrender they would be tried under the Frontier Crimes Regulation, so that persons guilty of murder would escape the extreme penalty of the law and be sentenced to a term of imprisonment not exceeding 14 years, which is all that can be awarded under the Frontier Crimes Regulation.§ An undertaking of this kind is given even in cases in which evidence sufficient for conviction exists.‖ A reference to this practice was made in the Police Administration Report of 1928. The action of the authorities in tolerating a procedure of this kind is intelligible. They do so to avoid other serious offences which certain outlaws are considered likely to commit. It has the effect of solving immediate difficulties, but cannot fail to create an impression that absconding is part of good tactics and affords a chance of avoiding a death sentence, even if there is good evidence. The outlaws thus receive encouragement to stay away and wait for a favourable opportunity of surrendering on terms to be agreed upon. We have come across cases in which the period during which an outlaw remained in tribal territory was taken into consideration in awarding sentence on the recommendation of a jirga. In 1920 and 1921 a large number of outlaws surrendered on the understanding that settlement with aggrieved parties would be arranged. Settlements were brought about through conciliatory committees.† It is not a matter of surprise that by the end of 1930 the number of fugitives from the Peshawar District reached the high figure of 586. The settlements of 1920 and 1921 have been adversely commented on and increase of crime is partly, at any rate, ascribed to such settlements.† But this is in effect a criticism on the Regulation itself, one of the avowed objects of which, since 1871, has been to make a class of cases, including murder, capable of amicable settlement. While it is true that the proximity of the tribal area greatly facilitates the absconding of offenders, it is undeniable that lenient sentences provided by the Frontier Crimes Regulation for murder act as an incentive to abscond and to wait till chances of trial under the regulation are assured either by negotiation or by evidence being weakened by lapse of time. Apart from this consideration the proximity of the border to the offenders' own residence is itself some inducement to them to go into hiding and be at the same time in communication with their relatives. This condition is not peculiar to this Province but exists in other parts of British territory similarly situated and bordering on Independent territory, *e.g.*, the Eastern districts of the United Provinces bordering on the Nepal territory. What, however, distinguishes the case of this Province is the circumstance that fugitives find associates in the tribal area for committing offences in British Territory and in the absence of any extradition rules the influence of the Political Officers in the tribal area is the only check.

The ' forward policy ' adopted by the Government in the Tribal Territory in recent years has resulted in the increased influence of the political officers in that Territory, and a satisfactory solution of the problem may be found in that circumstance. The condition in the Tribal Territory, so far as it is contiguous to the Mardan Sub-divisions in the Peshawar District, has, we are told, improved in this respect through the good relations established between Mian Gul, Wali of Swat and the British Government. In¶ the Derajat Division, outlaws have

*Khan Bahadur Saaduddin Khan, Additional Judicial Commissioner.

†Mr. Fooks, I.P., Senior Superintendent of Police, Peshawar.

‡Khan Bahadur Abdul Hakim Khan, retired Inspector of Police, and Representatives, Bar Association, Bannu.

§Mr. Caroe, I.C.S., Deputy Commissioner, Peshawar, Mr. Fooks, I.P., Senior Superintendent of Police, Peshawar, and Representatives, Bar Association, Bannu, and many others.

‖Representatives, Bar Association, Peshawar.

¶Mr. Caroe, I.C.S., Deputy Commissioner, Peshawar, and Representatives, Bar Association, Mardan.

been surrendering unconditionally in large numbers and,* in consequence, the number of decoities is said to have considerably decreased during the last five or six years in Bannu.†

(*c*) That the inhabitants of this Province have a certain amount of facility in the illicit importation of arms from the tribal area, where rifle factories exist, can admit of little doubt but this circumstance loses all importance in relation to matters with which this Committee is concerned, as no license is necessary for even breech-loading shot guns in view of the dangers to which the population would be otherwise exposed. Shot-guns are used by murderers, and sometimes the 'Lor'‡ (a kind of sickle), is also used, just as in many parts of the country the 'gandasa' (chopper) is often resorted to. Once a man makes up his mind to commit murder, the kind of weapon he should use is of comparatively secondary importance. The illicit importation of arms has little relation to the cases of murder one comes across from day to day. It will undoubtedly be a disquieting feature in cases of apprehended rising on a large scale with which the ordinary penal law, including the Frontier Crimes Regulation cannot cope, and nothing short of martial law can meet the requirements of such a situation.

(*d*) Lastly, under this head, it has been pointed out that a large number of foreigners migrate to the district of Peshawar every cold weather.§ The Annual Police Report for Peshawar District for 1930 mentions the number of such visitors as 13,700 Afghans and 25,400 tribesmen. It is not said if this is a source of danger and if so in what manner. In judging from decided cases, records of which have been examined by us, the number of offences committed in the British territory by inhabitants of the tribal area is very small. It is in evidence that an inhabitant of the tribal territory would rather wait for his victim to be found in his own territory than risk his safety by committing an offence in British Territory.

(2) *Blood-feuds.*—That cases of murder due to blood-feud do occur in this province can admit of no doubt. This is not, however, a feature peculiar to it. We find that out of 679 murders committed in the Punjab in 1929 no less than 49 were returned as murders due to blood-feud. The number of such murders in the same year in this province as shown in the Police Administration Report is considerably larger, namely, 106 out of a total of 490. On examination of the records of decided cases, we were led to the conclusion that the number of murders in which the motive of the offenders was to avenge a previous murder was small It is possible that in such cases, the motive being well known, proof sufficient for judicial conviction was generally found and many cases of that description were not referred to Councils of Elders. We were nevertheless somewhat surprised at 106 murders out of the total of 490 having been returned in 1929 as murders committed in pursuance of blood-feuds. Accordingly all police reports in cases of murders committed in 1929 throughout the province were sent for by the Secretary, whose examination, and subsequently our own, led to the discovery that cases in which blood-feud was alleged to be the motive was 38. In the remaining 68 cases motive was either not known or was said to be "previous enmity", the cause of which was mentioned in some and not in others. 'Previous enmity' is, in many cases according to the facts mentioned in the reports, referable to disputes about land, loans, etc. It appears that in making a classification of murder cases the expression "blood-feud" was used in too comprehensive a sense so as to include a very large number of cases in which the blood-feud properly so called was not the motive. Of the genuine 38 cases above referred to, 17 occurred in Peshawar, 11 in Bannu, 8 in Kohat, 2 in Hazara and none in Dera Ismail Khan. It is noticeable that one of these cases is said to have occurred between two Hindu parties in Bannu in very peculiar circumstances. Police investigation showed that one Aya Ram was sentenced to death for the murder of a woman. He made a confession before he was hanged in 1922 that he had been responsible for the murder of one Dotana in 1921. In 1929 his brother Chet Ram was reported to have been killed by Darab, the brother of Dotana.

It is remarkable that in no less than five murder cases arising out of blood-feud, murdered men had served sentences of imprisonment under the Frontier

*Malik Khuda Bakhsh, Public Prosecutor, Deraiat.

†Representatives, Bar Association, Bannu, Statistics, Appendix III.

‡Mr. Ataullah, Dera Ismail Khan, Khan Bahadur Gulab Khan of Kohat, Representatives, Bar Association, Bannu.

§Mr. Fooks, I.P., Senior Superintendent of Police, Peshawar.

Crimes Regulation for the murders which were avenged by their own murders—a circumstance which shows that sentences of imprisonment passed under the Frontier Crimes Regulation do not put an end to blood-feuds.

The oral evidence of witnesses, who gave merely their own impressions to the effect that cases of murders due to blood-feud rarely occur is not of much consequence. We think that cases of this class do take place, probably more in villages near the border, where people are actuated by trans-border sentiments to a greater extent, than in other rural areas. Crime of this description is almost unknown in urban areas. As already stated, this is not a condition peculiar to this province, as blood-feuds exist elsewhere, though not to the same extent as in this province.

(3) The Pathan has undoubtedly a trait of character which, though found in many communities inhabiting India, is so deeply rooted in him as to make him commit murders for vindicating the honour of himself and his near relatives.* The infidelity of a wife, particularly if it is known to others, is regarded not only as a sufficient justification for killing her and her paramour but as laying a duty on the husband to efface their existence, which is a living symbol of his dishonour. He considers himself unfit to face the society if he fails in this duty to himself and his family. The society, in its turn, responds to this feeling by showing all the tenderness it can by unreservedly condoning his action. This ethical rule of conduct has been termed the " Pathan Code of Honour ".

Some witnesses made futile attempts to justify the murder of an erring wife with reference to the Quranic injunction regarding a woman guilty of adultery being liable to capital punishment. The obvious fallacy in this line of thought is that the Quran does not confer this privilege on the husband to murder the adulterous wife. It merely contains a penal provision to be given effect to by the ecclesiastical-cum-temporal authority. It is overlooked that the adulterer is also liable to the same punishment and so are those guilty of many other offences. We doubt if husbands would be willing to submit to all the penal provisions enjoined by the Islamic law, including loss of hands for theft.

It cannot be denied that a large number of murders are prompted in this province by the sense of dishonour arising from a woman's misconduct. The murder of women owing to similar circumstances is common enough in other parts of India. The ratio of murder cases in which women are involved to the total number of murder cases in the Punjab is nearly the same as in this province, as would appear from the following figures :—

Punjab—		
(A) Total number of murders	.. ..	679
(B) Murders due to women ..	.. ..	268
(C) Ratio of (A) to (B)	.. .. ..	39 .4 per cent.
North-West Frontier Province—		
(A) Total number of murders	.. ..	490
(B) Murders due to women ..	.. ..	169
(C) Ratio of (A) to (B)	.. .. ..	34 .5 per cent.

In all communities, particularly those belonging to martial classes, the same feeling exists and sometimes leads to a similar treatment of women. The state of crime of this description is much greater here than anywhere else. It is, of course, the outcome of the sentiment already referred to ; but we are constrained to observe that the indulgence with which that sentiment has been treated by the law of this province is not a little responsible for this abnormal condition. Ever since the Regulation of 1871 was passed, it has been possible to allow composition of murder cases and to inflict sentences of fine and imprisonment. This is putting a premium on murder, and it is not a matter of surprise that the number of murders is as large as we find it. It has been advocated before us by some witnesses that a murder committed on grave provocation, not necessarily sudden, should be punishable with a nominal sentence. A number of official witnesses seem inclined to respect this feeling.† It must be said in fairness that

*Mr. Caroe, Deputy Commissioner, Peshawar. Mr. Thompson, Additional District and Sessions Judge, Peshawar, Sheikh Abdul Hamid Khan, Mir Munshi, Mawaz Khan and Waliullah, representatives of Bar Association, Abbottabad.

†Captain Hay, Joint Deputy Commissioner, Mardan. Mr. Caroe, Deputy Commissioner, Peshawar.

non-officials holding advanced views do not share this sentiment. The conclusion to which we are driven by the considerations mentioned above is that the feeling of revenge is appreciably stronger in this province than in the rest of India in cases where a point of honour according to popular notions is involved ; and that the murder of a wife for her infidelity is an act in vindication of honour, which the society does not look upon with disfavour.

(4) It has been stated by a number of witnesses that the Pathan population of this province is virile, not easily amenable to law and order and prone to violent actions on provocation.* Others put it somewhat differently and explain that the Pathan does not pocket an insult but gives " tit for tat ".† In what ever language it may be expressed, it cannot be denied that a tendency to resort to violence exists in a greater degree in this province than in any other province.

(5) Another feature, mentioned as peculiar to the people of this province, is the existence of faction feeling in villages. It is said to be responsible for a good deal of false accusation and suppression of evidence. We are unable to say whether these evils—whether arising from faction feeling or otherwise—are peculiar to this province. They exist more or less in other parts of the country. But we find unmistakable evidence of this tendency in almost every case. Persons other than the real offender or offenders are implicated, and sometimes, though rarely, the real offender, being unknown to the accuser, is left out and others suspected, rightly or wrongly, to be the perpetrators of the crime, are accused.‡ As a necessary consequence, evidence, wholly or partly false, is produced in support of the charge thus made ; and a strictly truthful witness, who is naturally unwilling to support a partially false case, is necessarily withheld. because he would do more harm than good to the complainant's case. The witness himself has no objection to giving evidence, provided he is not required to embellish his story by adding some falsehood in some particulars.† Once a murder, dacoity or riot takes place, or grievous hurt, with a sharp weapon or otherwise, is caused so as to leave a visible injury, the complainant or one interested in him gets his life's chance to settle old scores with all those with whom he has been on bad terms. The death or injury is an undeniable indication of the commission of an offence and so far supports the complainant that the offence must have been committed by someone, and if it could have been committed by more than one person, (and in most cases, more than one person can be said to have committed the offence, jointly as principals or accessories), the complainant's enemies are at his mercy. The records of decided cases examined by us show that in a large majority of cases more persons than one are implicated. In many cases all the adult male members of the family are charged.‡ It is often a matter of great difficulty to distinguish, on the same evidence, between the guilty and the innocent. Cases of this kind are common enough in all parts of the country. The difficulty is greatly accentuated in cases of communal riots in which all those who took part in communal politics can be easily roped in. While, therefore, this unfortunate tendency prevails elsewhere, the justification to avenge wrong done in the past by injuring the wrongdoer himself, or him, his near relative, which is stronger in this province than elsewhere, greatly aggravates the evil.

Whether faction feeling is responsible for this state of things is a matter of secondary importance. To a certain extent faction feeling results from the existence of ' gundis ' which ordinarily signifies sub-divisions of the village community and a certain amount of rivalry or jealousy due to conflicting interests. Each of the village lambardars has a ' gundi ', which is not necessarily on bad terms, with other ' gundis '.‖ It is much the same as *paltidari* in the United Provinces. The relations between members of factions thus created depends on a variety of conditions. Unless a witness is, by relationship or otherwise, interested in one or the other of the parties to a case, the mere fact that he belongs to the same ' gundi ' or different ' gundis ' as the party does not affect

*Mr. Fraser, Judicial Commissioner, North-West Frontier Province ; Mr. Fooks, I.P., Senior Superintendent of Police, Peshawar ; Khan Bahadur Karim Dad Khan ; Sardar Shah Singh ; Mr. Charanjit Lal and Mr. Thompson, Additional District and Sessions Judge, Peshawar.

†Representatives, Bar Association, Peshawar.

‡Mr. Caroe, Deputy Commissioner, Peshawar. Mr. Thompson, Additional District and Sessions Judge, Peshawar ; Representatives, Bar Association, Mardan.

Mr. O. K. Caroe, Deputy Commissioner, Peshawar.

Mr. Samiuddin, Representatives, Bar Association, Peshawar.

his willingness to give evidence.* It is true, disinterested witnesses are reluctant to give evidence, partly because of the harassment to which they are necessarily subjected in the course of the police investigation or in attending courts† and partly because none of the parties cannot benefit from his evidence without an admixture of falsehood which besides being objectionable in itself is calculated to give rise to enmity. This class of persons, though unaccommodating as witnesses, does assist the police secretly by giving important clues which the police work on.‡ Sometimes disinterested witnesses are left out through want of tact or efficiency on the part of the police.§ Malik Khuda Bakhsh, who has been Public Prosecutor, Derajat, for 4½ years, has "never known a glaring instance of evidence being suppressed".

That people refrain from giving evidence for fear of reprisal is not generally true, though in dacoity cases such fear is not absent,‖ probably because of the desperate character of the outlaws who are often responsible for that class of crime.

Cases of murder due to the victim having given evidence are few and far between; but according to Mr. Adam, Inspector-General of Police, the reason is that those who can give evidence do not give evidence and are, therefore, not murdered. As against this theory we find that in a large number of cases direct evidence is forthcoming (it may or may not be considered to be reliable), without giving rise to murder cases.

Our conclusion under this head is :—

(1) In cases of murder, culpable homicide, grievous hurt and similar offences complainants falsely implicate persons other than the actual perpetrators on suspicion or out of motive of revenge, and try to support their case by perjured evidence of those under their influence;

(2) Faction feeling exists in villages as it does in many other rural areas in other provinces;

(3) It does not, apart from the consideration of relationship or personal regard, appreciably lead to fabrication or suppression of evidence;

(4) Disinterested and truthful witnesses are not unwilling to give evidence, except when they are required to state falsely or to state more then what is warranted by their personal knowledge;

(5) There is no fear of reprisal in people who can give truthful evidence, except possibly in cases in which dangerous and desperate characters are involved—a weakness exhibited in other parts of India as well;

(6) Some witnesses have referred to the facility with which assassins can be hired in this province. Mr. Fooks, Superintendent of Police, Peshawar, thinks that "it is not a case of a few professional murderers who may be found in the district but there are a large number of potential murderers who can be hired to commit assassination. About 20 to 25 thousand trans-border people migrate to the Peshawar district every cold weather and out of them many people can be hired as assassins". Most of the non-official witnesses and some official witnesses of position, whose experience in this respect cannot be questioned, maintain that assassins can be hired from among the bad characters in this province as everywhere else and that it cannot be regarded as a peculiar characteristic of this province. Mr. Adam, Inspector General of Police, does not put the case higher than this. "It is easy to hire an assassin and have one's enemy killed. It is not, however, so common now as it used to be." The records of cases examined by us lead us to believe that cases of murder committed by hired assassins are not so many as to justify the assumption that this province stands by itself in

*Khan Bahadur Saaduddin Khan, Additional Judicial Commissioner, North-West Frontier Province; Representatives, Bar Association, Peshawar and Mardan; Mr. Mohd. Safdar Khan.

†Mr. Adam, Inspector General of Police, North-West Frontier Province; Khan Bahadur Karim Dad Khan.

‡Malik Khuda Bakhsh, Public Prosecutor, Derajat.

§Khan Bahadur Saaduddin Khan, Additional Judicial Commissioner, North-West Frontier Province.

‖Captain Hay, Joint Deputy Commissioner, Mardan.

this respect. Having regard to the total number of murders committed every year, the number of those in which there is reason to think that hired assassins were employed is not large. One can seldom be certain that a particular murder was committed with the help of an assassin. In every case in which a murderer is not identified and the person who had a motive to kill the victim cannot be accused of having committed the murder himself in view of good evidence to the contrary, it can be easily suggested that he employed a hired assassin ;

(7) Emphasis is laid on the first six conditions as causes leading to or facilitating the commission of crime involving violence. The ratio of murder cases per 10,000 population in this province in 1929 according to the Police Administration Report was 2.02 while that in the Punjab was 0.29. Tendencies such as those described above lead to crime everywhere ; and enmity due to blood-feud or otherwise, acute sense of dishonour, feelings of jealousy and vanity, which are at the bottom of the ' Pathan Code of Honour ' and virility, coupled with sensitiveness, are the causes which lead to crimes of violence in every part of the world. But for them, there would be little crime of that description, which must necessarily vary with the degree to which the people of any part of the country exhibit those qualities. The tendencies above referred to exist in a greater degree in this province than in the Punjab taken as a whole. Lenient sentences passed in murder cases aggravate not a little those tendencies ;

(8) A certain custom regarding marriages is said to prevail in a section of the Muslim population of this province. It is customary for the bridegroom to make a payment of money to the bride's father or other person having the care of her. Public opinion is now asserting itself against such a custom. How far payment of this kind is enforceable in a court of law is a question which never arises in practice. Whatever payment is agreed on, if it is the subject of an agreement at all, is paid before the marriage comes off. Ordinarily, the money is spent for the benefit of the bride herself, though sometimes selfishly disposed parents or guardians appropriate it for themselves. The bride herself, when married for the first time, has no voice in matters relating to her marriage. This is not peculiar to the people of this province but is the case with most Indian communities. The case, however, is different when she marries a second time, after being widowed or divorced. She is then an absolutely free agent, being a grown-up woman. It is open to her to chose her own husband, and she does so more often than not. Whether her second husband should make any payment for her hand or not is a question which gives rise to disputes. It cannot be denied that, as matters now stand, claims are frequently made by the first husband or his heirs for recovery of money alleged to be payable on her second marriage. The right to receive this payment is claimed for the benefit of the first husband or his heirs and not for that of the woman herself. Where she marries contrary to the wishes of her first husband or his heirs, the claim is pressed with a certain amount of bitterness. Such a marriage being generally the result of negotiations in which the woman takes active interest, payment to her first husband or his heirs is not a condition precedent to the marriage itself. In the majority of cases, therefore, claims are sought to be enforced after the marriage and in some cases long afterwards. Payments of this description are called ' rasmana ' or ' sharmana ' or ' riwaj '. It is a moot question whether a claim of this description, being in the nature of a price for the woman given in marriage, is immoral or opposed to public policy. It is maintained by the educated sections among the Pathans that the custom is immoral and opposed to public policy and did not exist to an appreciable extent before the enactment of the Frontier Crimes Regulation, which has had the effect of perpetuating it. It is not possible to say whether such a custom existed before 1887 and was considered enforceable in law. Though it may be looked upon with abhorrence by educated people, the evidence before us establishes beyond doubt that the lower classes of Muslims

in the rural areas of this province practice it and seek to enforce it under section 8, Frontier Crimes Regulation, though not in a court of law. As to whether such a custom should be encouraged and allowed to be enforced by a legal process is a different matter, dependent upon considerations which we shall deal with at a more appropriate place. No other customs relating to marriages have been mentioned by any witnesses.

We sum up our conclusions on this part of the report as follows :—

(1) The proximity of the tribal area enables the inhabitants of some villages situate near the border to maintain social relations with the inhabitants of that area. This by itself has no appreciable effect on crime, but the geographical position of the province affords great facilities for offenders to abscond and to find an asylum not far from their residence It also facilitates the importation of unlicensed arms ; but this has no appreciable bearing on crimes of violence, which can be and are committed with weapons lawfully possessed by the inhabitants. The periodical influx of visitors from tribal areas ordinarily does not increase the number of offences committed in the British territory, which are generally attributable to local causes.

(2) A large proportion of murders and attempts to commit murder is prompted by the unduly strong sentiment of jealousy and dishonour felt on the infidelity of a woman.

(3) The Pathan is virile and sensitive, and resorts to violence on not very grave provocation. This trait of his character contributes to a not small extent to crimes of violence prevalent in the province.

(4) Faction feeling is not peculiar to this province and prevails in the same manner as elsewhere ; but false accusation and perjury, which are undoubtedly too common, are not necessarily referable to faction feelings ; nor is it impossible for disinterested witnesses not coming forward to give evidence. The reluctance of people to give evidence is due to the same causes as in other provinces. In this province it is accentuated by the fact that few honest witnesses can support the case of a complainant who invariably implicates innocent persons ; nor is it due, except possibly in rare cases, to fear of reprisal.

(5) People can be found in this province, as elsewhere, who would commit murders for money. There is, however, a difference of degree, and greater facilities exist in this province for obtaining the services of a hired assassin. Murders committed with the help of hired assassins are not as common now as they used to be.

The cumulative effect of all the circumstances noted above coupled with the lenient treatment of persons accused of murder is that the ratio of murder cases and offences involving violence per 10,000 population is much more than in any other province.

Whether there is any other relation between the ever increasing crime of violence and the Frontier Crimes Regulation, which was enacted to check it, is not necessarily answered by the existence of the conditions described above. We shall discuss this aspect of the matter after examining the provisions of the Frontier Crimes Regulation and the manner in which they work out in practice.

CHAPTER IV.

The tribunal, styled as, ' Council of Elders ' plays an important part in the trial of civil and criminal cases under the Frontier Crimes Regulations and its constitution calls for an explanation at the outset. It is defined in Section 2 (*a*) as " a Council of three or more persons convened according to the Pathan, Biluch or other usage, as the Deputy Commissioner may in each case direct ". Biluch custom may be left out of account as there are no Biluchis in the five districts comprised in the North-West Frontier Province. The reference to the Baluch usage in the definition is due to the Frontier Crimes Regulation being applicable also to Dera Ghazi Khan which is predominantly populated by Baluchis. Obviously " Pathan usage " is meant for guidance as regards the North-West Frontier Province. The institution of jirga as it exists in the Tribal Territory is unknown among the Pathan inhabitants of the British Territory, apart from the Frontier Crimes Regulation in which the definition occurs. In view of the unfettered power, which is given to the Deputy Commissioner in selecting the personnel of the Council, the " usage " counts for little. All that the definition can, therefore, mean is that in convening a Council of three or more persons for the purposes of a case he may take into consideration the Pathan usage as it obtains in the Tribal Territory from which the system inaugurated by the Frontier Crimes Regulation draws its inspiration.

The Council of Elders or an assembly formerly known as jirga and its jurisdiction in Tribal Territory are so far different from those under the Frontier Crimes Regulation that there is nothing in common between the two except the name. The conditions in the two territories being radically different, it is not practicable to form a jirga in British territory in accordance with the usage in Tribal Territory and to make it discharge the same duties.

It has been already mentioned that two, out of the three members of the Committee which reported on the Draft of the Frontier Crimes Regulation of 1901 were opposed to the provision which made it possible for a sentence of 14 years (instead of 7 years under the Frontier Crimes Regulation of 1887) to be passed on the verdict of Jirga. We find in their reports a detailed description of what the Council of Elders is in the Tribal area and we cannot do better than quote from the opinions expressed by Messrs. Cunningham and Merk.

Mr. Merk says, " But before doing so I would ask permission to remove a possible source of misconception by pointing out the fundamental difference between the jirga of a clan in independent territory, and the Council of Elders as appointed under the Regulation, which Council is commonly called a " jirga " but which has nothing more in common with the other jirga than its name. The jirga of independent territory is the supreme and only authority in the clan, short of an assembly of all the clansmen. It is composed of all the men pre-eminent in the tribe for their wisdom, wealth, energy, birth, eloquence, tact and knowledge of the art of managing men ; to it is delegated the authority of the clan ; and by virtue of its constitution and delegation it possesses immense power, it is a permanent corporate body. It may consist of as many as one thousand to two thousand members ; it is always of necessity of numerous corporation. It would be about as easy for any individual in a private case to bribe this jirga as to corrupt the whole House of Commons. It is responsible to the clan or tribe, and its decisions are subject to a " Referendum ", which is not always exercised but which exists ; a conflict between the jirga and the clansmen can be very promptly and drastically vindicated by the latter. Its decisions must as a rule be unanimous, for seeing that a dissentient minority, instead of bowing to the majority as with us, is perfectly ready to obey a call to arms, and seeing that civil war is generally inconvenient, the jirgas endeavour and contrive to arrive at unanimous resolutions if they can, except where one party is prepared to fight it out with the other. It follows that when it does come to a resolution it is free from partisanship. In the cases where a jirga in independent territory deals as such with private affairs, for instance with the murder of one clansman by another, it is Parliament, the High Court of Justice, the Government, the Police and the executioner all rolled into one.

" Our jirga or Council of Elders is nominated by us each time afresh for the particular occasion ; it is composed of a small number of men, rarely more than fifteen ; their sole function is to enquire into and pronounce an opinion upon the truth of a certain allegation ; they are responsible to no one except to their own consciences and to the officer who receives their verdict, the latter part of the responsibility resolving itself into the somewhat remote chance of a conviction for misconduct ; it is sometimes not difficult to bribe a small number of men,

and there are no strong or effective checks upon faction spirit beyond those supplied by the individual knowledge of the officer nominating the jirga and the objections of the parties to the case. The Council of Elders corresponds almost exactly to the early English jury, out of which the modern jury has developed. I have ventured to dwell upon the essential distinctions between a jirga of independent territory and what we call a jirga under the Regulation, because owing to the conditions I have sketched an analogy drawn from the one body to the other would be very probably misleading; and because at different times since the passing of the Regulation such analogies have been made. They have to be taken with great caution: and it is best I think in considering the case of Councils of Elders to leave that of trans-frontier jirgas out of account."*

Mr. (afterwards Sir Frederick) Cunningham says, "The main function of a true jirga is to decide upon matters affecting the welfare of the clan, it is in fact the supreme authority, subject to appeal to the whole tribe, if, as must very rarely happen, the decision of the tribal council should be contrary to the sense of the majority of the clansmen. It must always be a large body: it can seldom be less than a hundred in any fairly large division of a tribe. But its function is ordinarily political, to decide questions of peace or war or negotiations with other sections of the same clan or with other clans. It is true that questions of private right or wrong are referred to the tribal council. If a man who has been injured is not strong enough to avenge himself he may go to the greybeards or leading men, and if the case is worth it, the jirga may intervene to make a settlement. It is true also that the jirga sometimes execute their own decisions, as by burning the house of a man who by some unprovoked murder has outraged public sentiment.

"Nevertheless in all private cases the business of the jirga is to compose quarrels, to settle compensation, and to restore peace. They are not called on to decide guilt or innocence in the interest of justice or of such an abstraction as the State. I doubt whether the act itself is ever in question or is denied. The plea of not guilty is probably never put forward; the clansmen of age and status qualifying them for the jirga know too much to make it worth while.

"The issue is what blood-money, what compensation for eloping with another's wife, mother or sister is the defendant to pay. Such a jirga in the majority of cases is a court of conciliation to determine compensation in money, arms, land or marriageable girls. The complainant is ordinarily free to take it, or to refuse and avenge himself. The accused is at liberty and can plead his own cause, the provocation given, or the satisfaction offered. It is unnecessary to dwell on the difference between that and the function and procedure of a jirga convened by a Deputy Commissioner to report whether A dealt the fatal blow that killed B, or broke into the house of C. A few salient distinctions may be noted.

"The jirga 'according to Pathan usage' is always a large body; it is certain to include many local residents fully acquainted beforehand with the facts and the history of both sides. It may be bribed, but its numbers are some guarantee against corruption. The jirga of the Regulation must consist of three at least, the more the better, but in practice it is rare to find more than five. In Peshawar and Kohat it is usually three. It has been laid down in Punjab Government letter No. 541. dated 29th April 1889, that "that the general principle underlying the Regulation is that.....the corrective of the weakness or want of legal evidence shall be the strength of local knowledge". But a very little acquaintance with the difficulties of working the system would show that in practice it is often impossible to select from the locality men of sufficient status or character. In hundreds of cases we find Khans, Jagirdars or others put on a jirga to try a case of burglary of which till they go to the spot they know nothing. The corrective of the want of legal evidence such as the Police can get is then the information which they can acquire by means not available in ordinary procedure.

"Again in the tribal jirga 'according to Pathan usage' the defendant is certain to be present; with us he is usually in jail, or in lock-up; he can be interviewed there by the jirga and his reply heard, but that is a very different matter. His relations, if he has any sufficiently interested, may follow the members of the Council on their enquiry, but the accused himself knows nothing of it.

*(Extracts from letter No. 12-C.|43, dated 30th May 1899, from W. R. H. Merk, Esq., C.S.I., Deputy Commissioner, Hazara, to the Commissioner and Superintendent, Peshawar Division), paragraphs 4 and 5.

CHAPTER IV.

The tribunal, styled as, ' Council of Elders ' plays an important part in the trial of civil and criminal cases under the Frontier Crimes Regulations and its constitution calls for an explanation at the outset. It is defined in Section 2 (*a*) as " a Council of three or more persons convened according to the Pathan, Biluch or other usage, as the Deputy Commissioner may in each case direct ". Biluch custom may be left out of account as there are no Biluchis in the five districts comprised in the North-West Frontier Province. The reference to the Baluch usage in the definition is due to the Frontier Crimes Regulation being applicable also to Dera Ghazi Khan which is predominantly populated by Baluchis. Obviously " Pathan usage " is meant for guidance as regards the North-West Frontier Province. The institution of jirga as it exists in the Tribal Territory is unknown among the Pathan inhabitants of the British Territory, apart from the Frontier Crimes Regulation in which the definition occurs. In view of the unfettered power, which is given to the Deputy Commissioner in selecting the personnel of the Council, the " usage " counts for little. All that the definition can, therefore, mean is that in convening a Council of three or more persons for the purposes of a case he may take into consideration the Pathan usage as it obtains in the Tribal Territory from which the system inaugurated by the Frontier Crimes Regulation draws its inspiration.

The Council of Elders or an assembly popularly known as jirga and its jurisdiction in Tribal Territory are so far different from those under the Frontier Crimes Regulation that there is nothing in common between the two except the name. The conditions in the two territories being radically different, it is not practicable to form a jirga in British territory in accordance with the usage in Tribal Territory and to make it discharge the same duties.

It has been already mentioned that two, out of the three members of the Committee which reported on the Draft of the Frontier Crimes Regulation of 1901 were opposed to the provision which made it possible for a sentence of 14 years (instead of 7 years under the Frontier Crimes Regulation of 1887) to be passed on the verdict of Jirga. We find in their reports a detailed description of what the Council of Elders is in the Tribal area and we cannot do better than quote from the opinions expressed by Messrs. Cunningham and Merk.

Mr. Merk says, " But before doing so I would ask permission to remove a possible source of misconception by pointing out the fundamental difference between the jirga of a clan in independent territory, and the Council of Elders as appointed under the Regulation, which Council is commonly called a " jirga " but which has nothing more in common with the other jirga than its name. The jirga of independent territory is the supreme and only authority in the clan, short of an assembly of all the clansmen. It is composed of all the men pre-eminent in the tribe for their wisdom, wealth, energy, birth, eloquence, tact and knowledge of the art of managing men ; to it is delegated the authority of the clan ; and by virtue of its constitution and delegation it possesses immense power, it is a permanent corporate body. It may consist of as many as one thousand to two thousand members ; it is always of necessity of numerous corporation. It would be about as easy for any individual in a private case to bribe this jirga as to corrupt the whole House of Commons. It is responsible to the clan or tribe, and its decisions are subject to a " Referendum ", which is not always exercised but which exists ; a conflict between the jirga and the clansmen can be very promptly and drastically vindicated by the latter. Its decisions must as a rule be unanimous, for seeing that a dissentient minority, instead of bowing to the majority as with us, is perfectly ready to obey a call to arms, and seeing that civil war is generally inconvenient, the jirgas endeavour and contrive to arrive at unanimous resolutions if they can, except where one party is prepared to fight it out with the other. It follows that when it does come to a resolution it is free from partisanship. In the cases where a jirga in independent territory deals as such with private affairs, for instance with the murder of one clansman by another, it is Parliament, the High Court of Justice, the Government, the Police and the executioner all rolled into one.

" Our jirga or Council of Elders is nominated by us each time afresh for the particular occasion ; it is composed of a small number of men, rarely more than fifteen ; their sole function is to enquire into and pronounce an opinion upon the truth of a certain allegation ; they are responsible to no one except to their own consciences and to the officer who receives their verdict, the latter part of the responsibility resolving itself into the somewhat remote chance of a conviction for misconduct ; it is sometimes not difficult to bribe a small number of men,

and there are no strong or effective checks upon faction spirit beyond those supplied by the individual knowledge of the officer nominating the jirga and the objections of the parties to the case. The Council of Elders corresponds almost exactly to the early English jury, out of which the modern jury has developed. I have ventured to dwell upon the essential distinctions between a jirga in independent territory and what we call a jirga under the Regulation, because owing to the conditions I have sketched an analogy drawn from the one body to the other would be very probably misleading ; and because at different times since the passing of the Regulation such analogies have been made. They have to be taken with great caution ; and it is best I think in considering the case of Councils of Elders to leave that of trans-frontier jirgas out of account."*

Mr. (afterwards Sir Frederick) Cunningham says. " The main function of a true jirga is to decide upon matters affecting the welfare of the clan, it is in fact the supreme authority, subject to appeal to the whole tribe, if, as must very rarely happen, the decision of the tribal council should be contrary to the sense of the majority of the clansmen. It must always be a large body : it can seldom be less than a hundred in any fairly large division of a tribe. But its function is ordinarily political, to decide questions of peace or war or negotiations with other sections of the same clan or with other clans. It is true that questions of private right or wrong are referred to the tribal council. If a man who has been injured is not strong enough to avenge himself he may go to the greybeards or leading men, and if the case is worth it, the jirga may intervene to make a settlement. It is true also that the jirga sometimes execute their own decisions, as by burning the house of a man who by some unprovoked murder has outraged public sentiment.

" Nevertheless in all private cases the business of the jirga is to compose quarrels, to settle compensation, and to restore peace. They are not called on to decide guilt or innocence in the interest of justice or of such an abstraction as the State. I doubt whether the act itself is ever in question or is denied. The plea of not guilty is probably never put forward ; the clansmen of age and status qualifying them for the jirga know too much to make it worth while.

" The issue is what blood-money, what compensation for eloping with another's wife, mother or sister is the defendant to pay. Such a jirga in the majority of cases is a court of conciliation to determine compensation in money, arms, land or marriageable girls. The complainant is ordinarily free to take it, or to refuse and avenge himself. The accused is at liberty and can plead his own cause, the provocation given, or the satisfaction offered. It is unnecessary to dwell on the difference between that and the function and procedure of a jirga convened by a Deputy Commissioner to report whether A dealt the fatal blow that killed B, or broke into the house of C. A few salient distinctions may be noted.

" The jirga ' according to Pathan usage ' is always a large body ; it is certain to include many local residents fully acquainted beforehand with the facts and the history of both sides. It may be bribed, but its numbers are some guarantee against corruption. The jirga of the Regulation must consist of three at least, the more the better, but in practice it is rare to find more than five. In Peshawar and Kohat it is usually three. It has been laid down in Punjab Government letter No. 541, dated 29th April 1889, that " that the general principle underlying the Regulation is that.....the corrective of the weakness or want of legal evidence shall be the strength of local knowledge ". But a very little acquaintance with the difficulties of working the system would show that in practice it is often impossible to select from the locality men of sufficient status or character. In hundreds of cases we find Khans, Jagirdars or others put on a jirga to try a case of burglary of which till they go to the spot they know nothing. The corrective of the want of legal evidence such as the Police can get is then the information which they can acquire by means not available in ordinary procedure.

" Again in the tribal jirga ' according to Pathan usage ' the defendant is certain to be present ; with us he is usually in jail, or in lock-up ; he can be interviewed there by the jirga and his reply heard, but that is a very different matter. His relations, if he has any sufficiently interested, may follow the members of the Council on their enquiry, but the accused himself knows nothing of it.

*(Extracts from letter No. 12-C.|43, dated 30th May 1899, from W. R. H. Merk, Esq., C.S.I., Deputy Commissioner, Hazara, to the Commissioner and Superintendent, Peshawar Division), paragraphs 4 and 5.

" Lastly the composition of the tribal jirga is known beforehand, it settles itself, and its constitution is such that its decisions must be respected. With us the difficulties of selection are great. The Deputy Commissioner may be new to the district ; it is impossible for any one to acquire offhand such wide knowledge of men, of local factions and interests as to enable him to nominate satisfactory jirgas in all cases."*

Substantially the same account has been given by some witnesses before us. There is no suggestion by any one to the contrary.

As explained, in an earlier part of this Report, no tribal organisation now exists in the British territory, if it ever existed in living memory. Immediately after the annexation in 1849 the same system of civil and criminal justice was introduced in the settled districts as was in vogue in the Punjab of which they were integral part. The unit of administration for all fiscal purposes being a village, it was inevitable that a village organisation and a village community based on the land tenure system brought into existence by the land and revenue law of the British Government, should spring up and supersede the administrative machinery of the Sikh arrangement which preceded the annexation and which had its own systems not necessarily based on Pathan notions. There was, therefore, no room for any Pathan ' usage ' in the administrative system under the British Government even if there was any under the Sikhs. There have been no tribal affairs as such to be dealt with by any tribunal. The rights of individuals were defined by specified laws which had to be enforced by regularly constituted courts and public servants. Ordinary social intercourse was the only walk of life in which Pathan manners and customs could survive and form the etiquette observed in every day life. Such etiquette is not materially different from that observed by Muslims in other parts of India.

The position of elderly people or of those prominent in village life is much the same here as elsewhere. There is, of course, no such things as " Elders " of the tribe in any recognised form. In ordinary village life, views of persons occupying a distinctive position are respected as every-where, but leading members of one family have no concern with the affairs of another. Inside the family circle senior members have the same influence as they would naturally have.

In this state of things the Council of Elders under the Frontier Crimes Regulation does not derive its weight from any inherent importance possessed by the individuals composing it, but from the fact that they derive an authority from the administrative head of the district as regards a particular case and in this respect their position is not materially different from that of commissioners or arbitrators appointed by the Deputy Commissioner. Their functions are similar to those of a Police officer if they make a local investigation.

A " Council of Elders ", if drawn from the village to which a civil or criminal case relates, is expected to possess local knowledge and influence and would have had peculiar advantages but the counterbalancing drawbacks, which are far greater, preclude the possibility of a local council being associated with an enquiry. Every " Elder " in a village is generally interested in some way or other with one of the parties or is under the influence of those interested in one of them. In practice therefore ' elders ' forming a council come from other villages, often from those situated at long distances, which are seldom less than 5 miles. In making an enquiry, if they make one, they have to depend like any other tribunal on the evidence produced by the parties or the Police. They are generally assisted by local lambardars or other local functionaries.

The members of a ' Council of Elders ' or ' jirga ' appointed for a civil or criminal case are chosen out of a list maintained for each Tehsil. It is amended from time to time, by the inclusion of new names or the exclusion of those who have died, have become incapable of acting or are disapproved of by the Deputy Commissioner.

Government servants and members of the Bar who form the bulk of the educated class are not made jirga members for obvious reasons.

Men of position and many others do not like to have their names entered in the list,† and if they are listed avoid actually serving on the Council. The

*Extracts from letter No. 35-C./Camp, dated Nathiagali, 1899, from F. T. Cunningham, Esq., C.S.I., I.C.S., Commissioner and Superintendent, Peshawar Division, to the Chief Commissioner.

†O. K. Caroe, Esq., I.C.S., Deputy Commissioner, Peshawar, and Messrs. Ali Asghar, Hafiz Abdul Latif, and Sardar Ishar Singh, representatives of the Bar Association, Mardan.

explanation of their reluctance given by many witnesses is that occasions frequently arise when the views of the Council and the Deputy Commissioner differ and the Council have either to compromise with their own conscience or to incur, as they think, the displeasure of their district officers.*

On the other hand, there is a large number of persons who regard the position of jirga member as one of distinction and greatly covet it as it gives them a certain status in the Tehsil, occasional chances of exercising civil and criminal jurisdiction over other men in the locality and of access to the Deputy Commissioner, besides certain emoluments (a fee of Rs. 5 per diem with travelling allowance is paid to each jirga member). Many therefore seek the good offices of the Tehsildar and his subordinate officials to have their names entered in the list. By this means some incompetent persons succeed in obtaining the entry of their names.†

Not unnaturally those who have in some way rendered services to the Government or are in the good books of the district authorities succeed in obtaining the entry of their names in the list of jirga members.‡

Retired army officers such as Subedars, Rissaldars, etc., figure largely in the list. The majority of them, are not literate at any rate, to such an extent as to enable them to write out their own proceedings. Indeed the number of illiterate members is from all accounts very large.§ In some places the percentage of literacy among them does not exceed 30 per cent. and nowhere, except perhaps in that part of Peshawar which includes the City and Cantonment is it higher than 50 per cent. It is urged that literacy is not a correct test and that robust common sense and knowledge of human affairs are all that are needed. Even so, not many illiterate persons will be found to possess these admirable qualities and considering the issues which are involved in many civil and criminal cases literacy and even good education do not furnish the required qualification. It is not infrequently the case that the aid of petition writers is obtained to do the clerical work in the course of enquiries by the Council of Elders and to draw up their findings. This happens even where one or more of the members can write but none is versed in that kind of work. In such a case it is difficult to say how far the clever petition writer can super-impose his own views or influence those of the Council.

Complaints of corruption are frequently made. They are often well founded.‖ Proof of dishonesty is difficult, but cases have occurred in which names have been removed on that ground.¶ A large number of jirga members is said to be not above temptation or open to influences.**

A sort of etiquette is said to exist among the less reputable jirga members ; if one of them becomes interested in one of the parties, his colleagues are inclined to oblige him as the former is expected to do when the latter finds himself in a similar position.†† It is not surprising that an average jirga member is not a reliable person in the public estimation,‡‡ and his findings do not generally inspire confidence.§§ The representatives of the Peshawar Bar Association go as far as to assert that with " some honourable exceptions jirga members are professional and dishonest ".

Most of the witnesses who speak of Jirga members condemn them in strong terms. Others, though less vehement, are not satisfied with the personnel,‖‖

*Ali Asghar, Hafiz Abdul Latif and Sardar Ishar Singh, all Pleaders and representatives of the Bar Association, Mardan. Malik Muaz Khan of Bhanamari.

†Ladhu Ram, B.A., LL.B., Pleader, Bannu, Khanzada Ghulam Ahmad Khan, Hangu, Malik Khuda Bukhsh, B.A., LL.B., Public Prosecutor, Derajat.

‡J. H. Adam, Esq., I.P., Inspector-General of Police, North-West Frontier Province, Malik Khuda Bukhsh, B.A., LL.B., Public Prosecutor, Derajat, Khan Bahadur Maulavi Ghulam Hassan, Peshawar.

§Diwan Radha Krishan Puri, M.A., LL.B., Vakil, Mardan, A. Karim Dad Sadozai, Retired Inspector of Police and Honorary Magistrate, Bannu, Khanzada Ghulam Ahmad Khan, Hangu, Khan Mohammad Aslam Khan of Mardan.

‖O. K. Caroe, Esq., I.C.S., Deputy Commissioner, Peshawar, J. H. Adam, Esq., I.P., Inspector-General of Police, North-West Frontier Province, Captain G. L. Mallam, Census Superintendent, North-West Frontier Province, Diwan Radha Krishan Puri, M.A., LL.B., Vakil, Mardan.

¶Rissaldar Ajun Khan of Kalabat.

**Captain R. H Hay, Joint Deputy Commissioner, Mardan, Attaullah Khan, B.A., LL.B., Vakil, Dera Ismail Khan, Chiranjit Lall, Pleader, Peshawar, Ladha Ram, B.A., LL.B., Pleader, Bannu.

††Malik Muaz Khan of Bhanamari.

‡‡Malik Khuda Bukhsh, B.A , LL.B., Public Prosecutor, Derajat.

§§Kewal Krishna, Pleader, Dera Ismail Khan.

‖‖R. H. Fooks, Senior Superintendent of Police, I. P. S., Peshawar. Mohammad Safdar Khan, Senior Sub-Judge, Bannu, Kewal Krishna, Pleader, Dera Ismail Khan.

though they are inclined to overlook their failings on the ground that better men cannot be had. It is however, conceded that " one of the chief reasons for the unpopularity of the Frontier Crimes Regulation is that unsuitable persons are made members of the jirga ".*

The then Deputy Commissioner of Peshawar (Major Blakeway) is quoted in the report on the Administration of Criminal Justice for 1908 at page 8, to the following effect :—" At the close of the year under report a new system of trial by jirga was introduced under which a large and representative assembly of about 50 of the leading men of the district is summoned every quarter, and the cases which have been selected for reference under Section 11, Frontier Crimes Regulation, during the previous three months are then laid for disposal before the assembly, which has been designated the Jirga Sessions. By dividing the jirga into two or three smaller parties and distributing the cases from day to day amongst these bodies, the particular members of the jirga who will decide any case are unknown to the complainants and accused beforehand. The cases are decided on the spot, and no local visit is paid to the scene of the offence. The new system is admittedly an experiment and has been introduced in the hope that the extensive corruption which has tarnished the reputation of the Peshawar Jirgas may be thereby lessened. So far the results are encouraging, though no doubt there are disadvantages as well as advantages connected with the alteration in the procedure hitherto obtaining. There has undoubtedly, however, been a marked decrease in the solicitation and presentation of illicit gratifications in cases decided during the two sessions which have so far been held."

In the Report on the Administration of Criminal Justice in the North-West Frontier Province for 1909, at page 8, Mr. Barton, District Magistrate of Kohat, is reported to have been of opinion that " the difficulty of obtaining men suited by their integrity and intelligence to perform the work of these informal juries has been increasingly felt in the past year. The work is unpopular and distasteful to the best men while persons of a lower stamp of character are too apt to regard employment in jirgas as a valuable asset to their income. I have noticed of late a tendency to shirk responsibility and to exact too high standards of proof ; and in some cases a verdict of guilty is deliberately nullified by a system of reasoning which points rather to the innocence than to the guilt of the accused. Still, with careful working, the system forms a valuable adjunct to the ordinary law ".

Again the Annual Report on the Administration of Criminal Justice in the North-West Frontier Province for 1914 at page 9, the District Magistrate of Bannu remarks as follows :—" The percentage of convictions, though exactly the same as last year, is remarkably low, but as remarked last year, the working of this agency is not on the whole satisfactory to this District. Allegations of bribery are rife, and undoubtedly in some cases well-founded, while faction feeling is so strong that no important case can safely the committed to any but a jirga appointed from other districts. The remedy suggested by the Judicial Commissioner in the Provincial Report of 1913, that each party in a case be allowed openly to nominate an equal number of members for the jirga and that the District Magistrate nominate one or three members as arbitrators would scarcely alter the present position, as the factions are generally well-known."

The Annual Report on the Administration of Criminal Justice in the North-West Frontier Province for 1913 has the following passage at page 13 :—" The District Magistrate of Bannu (Mr. Bill) reports that the working of the jirga system has been much impeded by the faction feeling which is rife in the district and especially in the Head Quarters Tehsil. This has made it almost impossible to select impartial tribunals. One remedy for this state of things, which has been most successful elsewhere on the border, might be to allow each party in a case openly to nominate an equal number of members of the jirga and for the District Magistrate to nominate one or three members only as arbitrators. The members nominated by the parties would then be able to represent fully the cases of their clients, while the task of the District Magistrate in selecting impartial members would be greatly reduced by the fact that the number to be selected by him would never exceed three. It is much better to have on a jirga a certain partiality, while in reality, swayed by partisan feelings." (?)

We have had the occasion to examine a large number of cases in which decisions were based on the findings given by Councils of Elders and though it

*Captain R. H. Hay, Joint Deputy Commissioner, Mardan.

is not possible to find any traces of corruption or outside influences having worked on the councils, we are constrained to agree with those witnesses who have a poor opinion of the competency of an average jirga member. On the whole we do not think that the responsibility of deciding a criminal or civil case, not being of the simplest kind, can be safely entrusted to Councils of Elders such as can ordinarily be formed by the Deputy Commissioner in this province. If the list be overhauled and only men of approved merit and honesty be retained, their number will not be so large as to suffice for the bulk of cases which have to be referred to Councils of Elders unless they agree to become whole time jirga members.

CHAPTER V.

Trial of Civil Cases.

The powers of the Deputy Commissioner to assume Civil jurisdiction and to exercise it with conclusive effect are laid down by Sections 8 to 10 of the Frontier Crimes Regulation, which for facility of reference may be quoted *in extenso* :—

"8. *Civil references to Council of Elders.*—(1) Where the Deputy Commissioner is satisfied, from a Police report or other information that a dispute exists which is likely to cause a blood-feud, or murder, or culpable homicide not amounting to murder, or mischief, or a breach of the peace, or in which either or any of the parties belongs to a Frontier tribe, he may, if he considers that the settlement thereof in the manner provided by this section will tend to prevent or terminate the consequences anticipated, and if a suit is not pending in respect of the dispute, make an order, in writing, stating the grounds of his being so satisfied, referring the dispute to a Council of Elders, and requiring the Council to come to a finding on the matters in dispute after making such inquiry as may be necessary and after hearing the parties. The members of the Council of Elders, shall in each case, be nominated and appointed by the Deputy Commissioner.

(2) The order of reference made under sub-section (1) shall state the matter or matters on which the finding of the Council of Elders is required.

(3) On receipt of the finding of the Elders under this section, the Deputy Commissioner may :—

(*a*) remand the case to the Council for a further finding ; or

(*b*) refer the case to a second Council ; or

(*c*) refer the parties to the Civil Court ; or

(*d*) pass a decree in accordance with the finding of the Council or of not less than three-fourths of the members thereof on any matters stated in the reference ; or

(*e*) declare that further proceedings under this section are not required.

9. *Effect of decree on finding of Council.*—A decree passed under section 8, sub-section (3) clause (*d*), shall not give effect to any finding or part of a finding which, in the opinion of the Deputy Commissioner, is contrary to good conscience or public policy, but shall—

(*a*) be a final settlement of the case so far as the decree relates to any matter stated in the reference, although other matters therein stated may remain undisposed of ; and

(*b*) have, to that extent and subject to the provisions of this Regulation with respect to revision, the same effect as a decree of a Civil Court of ultimate resort, and be enforced by the Deputy Commissioner in the same manner as a decree of such a court may be enforced.

10. *Restriction on jurisdiction of Civil Courts.*—No Civil Court shall take cognizance of any claim with respect to which the Deputy Commissioner has proceeded under Section 8, sub-section (3), clause (*a*), clause (*b*), or clause (*d*)."

The conditions precedent which give jurisdiction to the Deputy Commissioner are :—

(1) where there is a dispute which is likely to lead to a breach of the peace, or

(2) one of the parties to a civil dispute resides in the Tribal Territory.

It should be noted that in the second case it is not necessary that there should be any fear of a breach of the peace, the reason being that in such a case there is always a danger of reprisal by a disappointed claimant who is resident of tribal area.

Section 8 is not limited to any class of cases. Whatever may be the nature of the dispute or whoever may be the contesting parties, the Deputy Commissioner can, subject to the initial conditions already referred to, assume civil jurisdiction. The section is so widely worded as to enable the Deputy Commissioner to decide with finality questions arising out of contracts, transfers including mortgages, specific reliefs, gifts including testamentary devises, inheritance according to Hindu or Mohammadan Law or customs applicable to the parties, partition, matrimonial disputes, adoption, guardianship of minors

and the like. The ordinary civil courts are bound to decide cases instituted before them in accordance with the Statutory Laws in force, the customs applicable to the parties and the Hindu or Mohammadan Law not abrogated by custom. The civil courts must adopt a given procedure in deciding cases, giving parties an opportunity of producing evidence oral and documentary. Ordinarily a right of appeal in two courts is given to the party dissatisfied with the result. The Deputy Commissioner and the Council of Elders are, however, not bound by any laws, substantive or of procedure ; no court fee is payable on any claim preferred under Section 8 Frontier Crimes Regulation ; the Council of Elders are not bound to hear or record evidence ; the parties cannot of right claim to produce any evidence except to make their own statements ; the parties cannot be represented by legal practitioners at any stage, whatever may be the nature of the dispute or the value of the subject matter involved ; the decree of the Deputy Commissioner shall have " the same effect as a decree of the civil court of ultimate resort " ; no appeal lies from the decree of the Deputy Commissioner ; the Commissioner has the power of revision but not " to vary or set aside any decision, decree or order given, passed or made in any civil proceeding under this Regulation unless he is of opinion that there has been a material irregularity or defect in the proceedings or that the proceedings have been so conducted as to occasion a miscarriage of justice or that the decision, decree or order is contrary to good conscience or public policy ". The decree of the Deputy Commissioner may proceed on any view which he thinks to be equitable, and the Council of Elders may decide a case referred to it according to what appears in its view to be just and equitable, irrespective of the rights determined by the laws applicable to the parties.

The ordinary system of administration of justice by Civil courts and that under the Frontier Crimes Regulation are so far apart and lead to such different results that the rights of a party may be pronounced to be of a particular character if determined by a civil court with reference to Statutory and other laws applicable to such party and totally different in nature and extent if they are to be adjudicated on by the Council of Elders and Deputy Commissioner who can, so to say, legislate for the purposes of each case as it arises. It should be noted in this connection that the Council of Elders is to decide not merely questions of fact but the " matters in dispute ", *i.e.*, all disputed questions of law and fact, though the Deputy Commissioner has to formulate these questions for the guidance of the Elders. He must, however, " pass a decree in accordance with the finding of the Council " but cannot himself decide any question of fact or law ; if dissatisfied with the finding, he should remand the case to the same Council or refer it to another Council. No one can, therefore, say with certainty what his own rights are until, at any rate, the Council of Elders has had the occasion to pronounce on them. There is always a possibility of one's rights being made the subject of dispute before a Council of Elders, who may determine them to be different from what every body else understood them to be, having regard to the law on the subject.

Again, no finality attaches to any decree passed by any civil court, even the Privy Council. There is nothing in the Frontier Crimes Regulation to prevent a case decided by any tribunal being re-opened, given, of course, the condition that a breach of the peace is imminent. The pendency of a civil case precludes the Deputy Commissioner from taking cognizance of it under section 8, but after the determination of the litigation in the regular civil courts there is nothing to prevent the Deputy Commissioner entertaining a claim by the defeated party and adjudicating on it differently. There is, of course no law of limitation to bar any action which the Council of Elders or the Deputy Commissioner may take. What ousts his jurisdiction is the " pendency " of a civil case. Once the pendency ceases the bar is removed.

It may be suggested that the illogical results indicated above will always be prevented by the Deputy Commissioner who is a responsible officer, or by the Commissioner in revision, who will rectify all errors due to arbitrary exercise of power. We do not think that the criticisms we have mentioned are met by reference to those safe-guards, assuming those safe-guards are otherwise effective. On the one hand the legislature of the country lays down definite laws by which rights and obligations of the subjects are measured so that every one can ascertain them in mutual dealings ; on the other hand if a breach of the peace is imminent, though at the instance of an interested party, such rights and obligations become unsettled and depend upon the view which the Council of Elders, the Deputy Commissioner or the Commissioner may take. The

vice of the system lies in the element of uncertainty which is thereby introduced and which is equalled only by the eccentricities of human nature. The Deputy Commissioner and the Commissioner may be admirable executive officers but, we believe, do not claim to posses such perfect and ready knowledge of civil laws, including Hindu and Mohammadan laws, and the legal attributes of a valid custom, as to declare the rights of the parties unaided by all legal assistance, which is considered indispensible by the highest tribunals, and without any trial, other than that what is to be had through a Council of Elders. The only reply which we expect to receive to this observation is that they do not profess to administer those laws but only justice and equity. This at once brings to the fore-front what we pointed out to be the mischief of the dual system. Are we to let the people of this Province understand that the enforcement of the laws made applicable to them is not guaranteed and that they should not determine their own rights with reference to the laws promulgated for them but should wait till some exponent of 'justice and equity' tells them what they are? It is not in many cases that two men agree as to what is in accord with justice, equity and good conscience. Hence arises the necessity of laws without which there can be no uniformity or certainty of title.

The existence of such a system is calculated to affect the value of property. The heirs of a deceased owner of property may for a time enjoy their patrimony, but an outsider cannot expect to get a title from any of them however clear it may be according to the laws to which they are subject, in view of the possibility—by no means remote—that one of them may threaten a breach of the peace and the rights of all are in the melting pot and depend upon the caprices of the Council of Elders.

We do not overlook the fact that the proceedings under the Frontier Crimes Regulations can be taken only if there is a dispute "which is likely to cause a blood-feud or murder or culpable homicide, not amounting to murder, or mischief or a breach of the peace". It may be remarked in passing that the likelihood of serious occurrences like blood-feud, murder, etc., in which a breach of the peace is necessarily implied ceases to be a condition precedent so long as "a breach of the peace" is threatened, however, trifling the cause may be or whatever be the gravity of the breach of the peace. The safeguard implied in this condition is quite illusory and can be easily made to appear to the Police or the Deputy Commissioner. A claimant who has not got a good case in a court of law but thinks that he can present a plausible one before the Council of Elders or the Deputy Commissioner can always create a situation which threatens a breach of the peace. An interested or designing person can always manage to have a Police report made or "other information" conveyed to the Deputy Commissioner so as to satisfy him that a breach of peace is likely. We are all familiar with the multifarious duties and pre-occupations of a District Officer and it is not surprising that ordinarily he accepts a "Police report or other information" on its face value. The peace of the district being his great concern he would rather take cognizance of a case than ignore it if he is inclined to think, as most district officers seem to do in this Province, that proceedings under section 8 can do no harm to the parties concerned. It has been stated before us by many persons that in a large number of cases the preliminary requirement of the section, *viz.*, existence of the likelihood of the breach of the peace is regarded by the Deputy Commissioners as purely formal and that they assume jurisdiction whenever they feel inclined to do so. If a Deputy Commissioner is kindly disposed towards an applicant importance is not attached to the initial condition.* We think the Deputy Commissioners do not realise that by entertaining an application they abrogate all laws in so far as the parties to that particular case are concerned.

There can be no doubt that the preliminary requirement referred to can be satisfied without much difficulty and that the ordinary law on which the rights of parties should depend can be circumvented by a person who finds it to be against his interest and who is therefore anxious to take the chance of better results arising from the 'Elders' notion of justice, equity and good conscience. It is true such a move can be checkmated by the opposite party forestalling his adversary by instituting a civil suit in which case the Deputy Commissioner's jurisdiction is ousted. It is in the highest degree undesirable that the law should make it possible for devices of the character illustrated.

Though the section provides that a mere likelihood of a breach of the peace is not enough to empower the Deputy Commissioner to take cognizance

*Mr. Thompson, Additional Divisional Judge, Peshawar, and Rai Sahib Jhinda Ram, Advocate and President, Bar Association, Dera Ismail Khan.

of a civil dispute and that the circumstances ought to be such that "he considers that the settlement thereof in the manner provided.....will tend to prevent.....consequences anticipated", no serious consideration is likely to be paid in practice to this further condition. A breach of the peace can no more be averted by the institution of proceedings under section 8 than it would be by the institution of a regular civil suit, unless the circumstances are such that the parties being brought before the Deputy Commissioner or the Council of Elders, will find themselves in a mood to arrive at a mutual settlement. Cases do sometimes occur in which by the timely intervention of a tactful district officer, or other influential persons, amicable settlements are arrived at. But, where one forum is substituted for another and a summary procedure is resorted to, the cause of peace cannot be advanced merely by that process. In most contested cases if the likelihood of a breach of the peace in fact exists it will continue to exist, unless other proceedings, for example, proceedings under section 107 or 145 Criminal Procedure Code are taken. The short duration of litigation ensured by proceedings under section 8 is not calculated to bring about peace and harmony if the results turn out to be contrary to the legal rights of the parties, which is not a remote contingency.

More extensive use of section 8 has been advocated by a District Officer* for settlement of disputes relating to inheritance as he thinks the provision is greatly appreciated. In simple cases involving household moveable property where there are no complications, division of property and settlement of petty disputes on matters of fact, agencies other than courts of law are highly desirable, but in practice it is highly difficult to draw the line between this class of cases and others in which difficulties may and do crop up as the controversy proceeds. This is particularly the case when there are no pleadings. We doubt if the Deputy Commissioner, not to speak of the "Elders" and the parties, can discover from facts stated the questions of law which would strike one who is versed in Hindu and Mohammadan laws and customs applicable to the parties, much less can he or they have any idea of many latent features of a case. Material difference is made in the rights of parties if facts not otherwise disputed be considered in the light of the law applicable. For instance in deciding a case of inheritance, a legacy left by a Muslim and clearly established as a fact is likely to be given effect to by a layman, regardless of the question whether it is in favour of one of the heirs or whether it was assented to by the other heirs and, if so, whether before or after the death of the testator. Nor would a layman pause to distinguish between a death-bed gift and an ordinary gift or how far delivery of possession is essential. How many district officers or "Elders" will be found in the North-West Frontier Province who can work out the Quranic shares of various heirs? Inheritance in this Province and the Punjab is greatly complicated by the introduction of certain customs. We do not think it is easy to appreciate whether an alleged custom modifying Hindu or Mohammadan law has the attributes of a valid custom which should be allowed to over-ride the former. What people call custom may be nothing more than a departure from the ordinary law on one or two occasions. We can multiply instances of difficulties which frequenty arise in disputed cases of inheritance. So long as rights of the people have to be ascertained with reference to certain laws, decision of cases must be in accordance with such laws and to do otherwise will be to stultify them.

Cases of partition seldom arise independently of inheritance. Where the rights of the parties and the extent of their shares are admitted they do not stand in need of settlement by an outside agency and divide the assets themselves or seek the intervention of relations and friendly neighbours. It is only when division cannot be effected without the decision of disputed questions of rights arising out of rules of inheritance, such as disability to inherit, or arising out of transfers testamentary or otherwise, question legitimacy complicated by acknowledgment, or treatment, or validity of a marriage in the family, or the like.

In view of the considerations we have indicated, and a variety of others, we think cases of inheritance and of partition are least suited to proceedings under section 8.

Mr. Almond, the District and Sessions Judge of Peshawar would limit by rules, but not by amendment of the Frontier Crimes Regulation, the operation of section 8 to cases in which women are concerned, for example those of restitution of conjugal rights, (which, he says, are of rare occurrence) those in which

*Mr. O. K. Caroe, Deputy Commissioner, Peshawar.

'Khula money', 'rasmana' or 'sharmana' is claimed. We do not think that claims for 'khula' money are ever made in practice. 'Khula' means divorce given by the husband at the instance of the wife. It depends upon the will of the husband; and if any consideration proceeds from the wife for obtaining divorce, it proceeds the divorce itself. General she foregoes her dower to obtain a divorce. We have neither been told by any witness, nor have we come across any decided case in which a husband claimed 'khula' money from the wife. There seems to be little justification for such a claim, if made, being triable under section 8, Frontier Crimes Regulation.

We have found in an early part of this report that it is customary in the lower strata of Pathan Society in the settled districts for the bride-groom to make payments to the bride's family. We have also found that, either as an independant custom or as an extension of the foregoing custom, payment is claimed on the re-marriage of widows or divorced women by the heirs of the husband or the husband himself, as the case may be. Such payment is demanded from the second husband. It is called 'rasmana' or 'sharmana'. Looked at from one point of view it is nothing but a refund of part of what the first husband had to pay on the occasion of his marriage with the woman in question. In any view of the case, it is a restraint on marriage which a divorced wife or a widow is perfectly at liberty to contract. Any fetter on her right to do so is said to be opposed to public policy, if not immoral. We think there is force in this contention. It has been put forward by a large number of non-official witnesses, and if the opinion of the intelligentsia is a factor in determining whether a claim is opposed to public policy and good morals, and in our opinion it is an important factor, the evidence before us is over-whelming, that claims to 'rasmana' or 'sharmana' are looked upon with abhorrence. The educated classes of the people greatly resent the encouragement which it receives from the findings of jirgas and decrees passed thereon. Some of them have expressed themselves very strongly on this subject. Mr. Saadudin, the Additional Judicial Commissioner, thinks that "in the majority of cases its working has degenerated into sale and exchange of women, as if they were mere chattels". In his viva-voce examination he expressed a definite opinion that claims of 'rasmana' or 'sharmana' are opposed to good morals and public policy and that such claims, if preferred in regular civil courts, cannot succeed. In his opinion the encouragement of such claims has a "baneful effect on the morals of the people". Malik Khuda Bakhsh, Public prosecutor, Derajat, is equally emphatic. Referring to section 8, Frontier Crimes Regulation he says that "it is used by the interested parties for unnecessarily harassing their opponents. The civil law of the land declares it illegal and section 8 has been legalising it. This section is generally used for settling disputes over women and allows what may otherwise be called sale of women..... Society has outgrown the conditions which could form a justification for the existence of this section. In this age when emancipation of women is the order of the day, Section 8 which, as a matter of practice, has been dealing with women as so many chattles, is an anachronism". Some district officers are also inclined to the view that claims to 'rasmana' or 'sharmana' are not in keeping with good morals and public policy*. It has been held by the highest court in this Province that a claim to 'rasmana' and 'sharmana' is not maintainable, being opposed to public policy. For this reason such claims are brought under section 8, Frontier Crimes Regulation, on the allegation, very often false, that a breach of peace is likely. It may be observed that if a breach of the peace is at all likely in such cases, the claimant himself, who insists on payment, or his supporters should be bound over, being determined to extort payment out of court. The second husband or the woman, who are generally on the defensive, cannot be held interested in disturbing the public tranquillity. To entertain a claim of this description, at the instance of one who threatens to commit a breach of the peace in consequence of non-payment of money due or not due, is to put a premium on breaches of the peace.

We have already described the character and ability of jirga members who have to give conclusive findings in cases under section 8. It cannot be expected that their decisions would be based on any uniform rule derived from law or custom. Matrimonial laws often involve consideration of delicate questions and a free licence to decide according to their own notions of justice and equity is bound to lead to startling results. The Deputy Commissioner who is to act on their findings labours under a peculiar disability in that any

*Mr. Caroe.

uncommon view taken by the jirga is considered by him to be in accordance with a supposed custom. We have come across a number of instances in which Councils of Elders arrived at conclusions, which offend against all laws, customary or otherwise, and against a sense of decency.

The following passage from the evidence of Mr. Saaduddin, the Additional Judicial Commissioner, North West Frontier Province, is interesting :—

" I know of an instance in which a jirga directed that the two parties before them should exchange their wives. Each was to divorce his wife and the other to marry her. I had the occasion to refer to this instance before the Chief Commissioner at a certain meeting in course of my criticism of the Frontier Crimes Regulation. Colonel Crosthwaite, who was then the Deputy Commissioner of Peshawar (and happened to be present at the meeting) said, there and then, that he had upheld that finding in finally disposing of the case ". We entertain no doubt that Colonel Crosthwaite believed that the extraordinary decision of the jirga was warranted by custom which he assumed was well known to them. If legal advice of any kind had been open to the parties in proceedings under section 8 we feel sure the Deputy Commissioner would have refrained from passing the decree which he did.

The representatives of the Bar Association, Mardan, made mention of an instance in reference to Section 8, Frontier Crimes Regulation. The facts stated by them appeared to us to be so incredible that we were not inclined to accept them as correct in all particulars. We sent for the record and acquainted ourselves with all the details of the case. The story told by them has been found to be substantially true. We proceed to state the facts and the decision on them as briefly as possible :—

The plaintiff in the case was one Abdulla. His widowed mother was taken in marriage by Jallandar in 1914 when Abdulla was yet an infant. Abdulla's grand-father Gulistan instituted proceedings under section 8 against Sikandar, the father of Jallandar, for the recovery of a certain sum claimed to be due from Sikandar in consequence of Jallandar having married his widowed daughter-in-law. This case was referred to a jirga which recommended that Musammat Marufa, then an infant, the daughter of his (Sikandar's) son Taus, be given in marriage to Abdulla, also a few years old, whose grand-father was directed to pay Rs. 100 in consideration of the marriage. It should be mentioned that Taus was a half brother of Jallandar who had married Abdulla's widowed mother. This arrangement was apparently accepted by Sikandar, who was the only defendant, Taus or Marufa being no parties. A decree was accordingly passed in terms of the jirga award. In 1929, by which time both Abdulla and Musammat Marufa attained marriageable ages, Abdulla applied for execution of the decree. Taus then, for the first time, became directly interested in the proceedings and was ordered to furnish security in Rs. 900 for the due performance of the marriage of his daughter. He protested against the order and applied to the Commissioner in revision. His revision was so far accepted that fresh proceedings under section 8, Frontier Crimes Regulation were directed to be taken for the determination of the question as to what relief should be granted to Abdulla Shah " taking into account the previous decree in favour of his grand-father Gulistan against Sikandar ". The Commissioner further directed that " Taus and Sikandar must be made parties, if the Council find that the plaintiff is entitled to be given a girl in *betrothal*. The Council must assess damages for default ". The security bond taken from Taus was discharged. On proceedings under section 8 being again taken, in pursuance of the Commissioner's order, a jirga was appointed which proceeded to record the statements of parties concerned. No less than 5 witnesses produced by Abdulla Shah the plaintiff, including his own uncle, stated that in the previous proceedings Musammat Marufa had been nominated (*namzad*) for Abdulla by Sikandar, the father of Taus, who was the grand-father of the girl. It was never suggested that a *nikah* had taken place so that Marufa had become the legally married wife of Abdulla in 1914. We have also quoted above the order of the Commissioner in which no more than *betrothal* occurs. Subsequently, however, it seems to have been realised that mere betrothal is of no consequence and that Abdulla could have no claim to the girl in the absence of a valid marriage. Taus and his witnesses of course mantained throughout that the girl had not been nominated, if at all, with his consent, by his own father and that Taus being only a half-brother of Jallandar who had married plaintiff's widowed mother had no concern with the affair. The

jirga persuaded the parties to nominate some arbitrators. The arbitrators and subsequently the jirga gave a finding that Musammat Marufa had been nominated *and married*.

We have not been able to discover any evidence in support of the allegation contained in the award of the arbitrators and the finding of the jirga as regards marriage. The jirga recommended that Abdulla Shah should pay Rs. 300 and a pair of bridal clothes and that Jallandar should pay Rs. 700 to Taus and if he failed to pay, Taus should recover the enhanced amount of Rs. 1,000 through the court and, lastly, that if Abdulla paid Rs. 300 and furnished a pair of bridal clothes Musammat Marufa would be given in marriage and " will be handed over to the plaintiff by being thrown into the doli " (aur wuh doli men dalkar hawala mudai howegi). The Deputy Commissioner gave effect to this recommendation and ordered Taus " to furnish security of Rs. 1,500 in six sureties on the approved lines, *i.e.*, the security will be forfeited if he fails to hand over the girl within the appointed time making due allowance for revision proceedings ". The order noted that Abdulla Shah and Jallandar accepted the decision but that Taus objected.

Two applications—one by Taus and the other by Musammat Marufa—were made to the Chief Commissioner who saw no reason to interfere and dismissed them.

A fact of some importance merits reference. One Mohd. Jan of village Jahangirabad, apparently employed in the Army and a relative of Taus or otherwise interested in him, made an application to his Commanding Officer complaining against the jirga, characterising the members to be partial to the plaintiff Abdulla Shah. The Commanding Officer forwarded it to the Assistant Commissioner, Mardan. The date of the application and of the awards of the arbitrators of the jirga throws some light. The application is dated 29th May 1929 and was forwarded on the same date. It was ordered by the Assistant Commissioner to be ' filed ' on the 5th June 1929. The award of the arbitrators and of the jirga is dated a day later, that is, the 6th June 1929. The complaint against the jirga made by Mohd. Jan had apparently an effect quite opposite to that aimed at. The jirga members annoyed by the aspersions cast on them introduced the story of the ' nikah ' which had not been suggested at any time before, in fact had been impliedly negatived ; it was never in controversy and neither the arbitrators nor the jirga had any business to give a finding on it. On the facts stated it is obvious that no law or custom could have justified Musammat Marufa being bargained away in the manner it was done. We are not aware whether she was forced into a marriage against which she protested in her application to the Chief Commissioner or whether Taus has forfeited the heavy security which he had to furnish. If the Deputy Commissioner had gone into the case minutely the facts noted above would have been discovered by him and in all probability the order would have been different. It is quite clear to us that due performance of the decree by Taus would involve commission of more than one offence under the Indian Penal Code. We do not think the Deputy Commissioner who passed the decree, much less the jirga members whose recommendation was acted upon, realised that the decree in effect directed Taus to do what was not only illegal but amounted to a criminal offence. The direction contained in the jirga award and therefore in the decree was that on the payment of Rs. 300 and furnishing bridal apparel Musammat Marufa would be made over to him (Abdulla) by actual seizure in the teeth of opposition by her father and herself. Even a married woman cannot be compelled in execution of a decree passed in a suit for restitution of conjugal rights to go to her husband. Any compulsion applied even in such a case amounts to an offence. The gravity of the order is much greater in a case like the one under review.

We quote the following from the statement of the Honorary Secretary, Bar Association, Mardan :—

> " About 15 months ago the wife of a certain person, resident of village Malikpur, Tehsil Mansehra, District Hazara, was abducted by another. On proceedings being instituted a jirga was appointed under section 8, Frontier Crimes Regulation which decided that the complainant should divorce his wife and the abductor should pay Rs. 800 to the complainant. The complainant refused to divorce his wife. I am not sure if the abductor deposited the sum of Rs. 800. The woman, however, remained with the abductor and has given birth to two children since then. It may be explained that under section 18, Frontier Crimes Regulation the Council of Elders can recommend the

composition of a criminal case on certain terms and that their recommendation can be treated as a finding under section 8. The case above referred to was probably a criminal case under section 498, Indian Penal Code, instituted on the complaint of the husband. Reference may also be made in this connection to section 30, Frontier Crimes Regulation, which makes adultery on the part of a wife punishable with imprisonment which may extend to 5 years or with fine. It was, therefore, in utter disregard of the criminal liability of the woman and her paramour, an act contrary to the wishes of the aggrieved husband, that the jirga made the recommendation which was given effect to by the decree of the Deputy Commissioner. The decree as drawn up must have directed the husband to divorce his wife on receipt of a certain sum. We are not aware of any law or custom under which a husband can in any circumstance be compelled to divorce his wife. A decree in the terms mentioned above is repugnant to Mohammadan Law and enables continuance of adulterous connection between a woman and the man of her choice."

Rai Sahib Jhinda Ram, Advocate, Dera Ismail Khan, has expressed himself as follows :—

" ..... it is strange that wonderful decrees are passed in such cases. You will find unmarried girls forced to marry such persons whom they did not like. You will find husbands forced to divorce their wives. You will find custody of minor children given to a minor. You will find many such strange and unheard-of things. Some instances of misuse of this section are given in my two letters (press cuttings) copies of which are attached herewith. I certify to the above expressions, through my experience which I gained during the time I worked as an Additional District Magistrate. To add to those, I give another instance, which I came across in the discharge of my duties as Additional District Magistrate. There was a decree which was passed under this section, by the order of the Deputy Commissioner, directing the judgment-debtor, a young Pathan, to accept Rs. 200 compensation and to divorce his young and pretty wife, to enable her to marry the decree-holder, with whom she had gone wrong. The decree-holder in addition to the amount which he had to pay to the judgment-debtor, was directed to marry a relative of his, a minor girl, to the judgment-debtor. The case was sent to me by the Deputy Commissioner for execution. The judgment-debtor who appeared before me insisted that he would not divorce his wife and would not accept compensation and a minor girl. I could not solve the difficulty which arose in the case. I was of the opinion that the decree was an unexecutable and illegal one. I reported to the Deputy Commissioner accordingly and wrote to him that I would not execute this decree. But the Deputy Commissioner solved this difficulty by ordering me, that as there was a danger of breach of peace, I should proceed against the judgment-debtor under section 40, Frontier Crimes Regulation, and should place him on security for three years. In pursuance of the said order I proceeded against the judgment-debtor under section 40, Frontier Crimes Regulation, and ordered him to furnish security for a period of three years. No surety was forthcoming, I had therefore to pass orders sentencing the judgment-debtor to three years rigorous imprisonment or till such time he gives security. The parents of the young man, both of them old people, came to my court weeping and crying that this young man was their only son on whom they depended for maintenance. They said they would die of starvation if their son was not released. I told them that I was helpless and that they should try to persuade their son to agree to divorce his wife. In case he agrees to divorce his wife I would gladly recommend to the Deputy Commissioner for cancellation of the security proceedings and after that their son would come to them. I arranged their interviews with their son. After a great deal of assertion and by beseeching and bewailing of his parents the young man was persuaded to agree. I had to perform the duty of a Qazi (such ceremonies take place generally in courts even the ceremony of performing the marriage), the young man in my presence and in the presence of two respectable Mohammadan witnesses, by

throwing three stones as is customary, divorced his young pretty wife whom he loved, against his inclination. I thereupon reported to the Deputy Commissioner that the man had divorced his wife and the security should therefore be cancelled. But as the Deputy Commissioner sent the record to the Resident, Waziristan, to obtain sanction for cancellation of his security and the required sanction did not return for many a day, the man had to rot in jail. The old people almost twice a day visited my court bewailing their fate that their son had not come out of the jail, although, they had sacrificed their daughter-in-law for his sake. Some days after, I resigned the Honorary office and till my resignation the order of release had not arrived. After that I did not remain in touch with the case and don't know what happened afterwards."

The Deputy Commissioners give effect to the decisions of jirgas on the assumption that in the tribal areas girls are given in marriage to compose differences. The essential point, which destroys all analogy between the tribal custom and the decisions above referred to, is the absence of mutual agreement. Settlements of this kind are not forced on unwilling parties by coercive measures of the kind possible under Section 40, Frontier Crimes Regulation, which it is obvious is resorted to give the colour of legality to an otherwise unauthorised act.

The exemption from court-fee is a great incentive to people putting forward groundless claims particularly those of 'rasmana' and 'sharmana'. It is generally admitted that cases of this description have greatly multiplied and are often decreed. We are of opinion that this is not only in disregard of the view taken by the highest court in the Province but contrary to the provisions of the Frontier Crimes Regulation itself, Section 9, which lays down in clear terms that a decree passed under Section 8 shall not give effect to any finding which in the opinion of the Deputy Commissioner is contrary to good conscience or public policy.

Complaint has been made by a number of witnesses that a custom like this which is immoral and opposed to public policy is being perpetuated by repeated decrees being passed in pursuance thereof. We think that this complaint is well founded. Customs grow out of instances and what was originally an attempt to extend the custom of payment on the marriage of a girl became by repetition an independent custom applicable to the re-marriage of widows and divorced women.

We have found from the records sent for by us that applications are made in large numbers by people for their claims to be dealt with under Section 8, Frontier Crimes Regulation, but that many of them are not granted. This leads the district officers to think that Section 8, Frontier Crimes Regulation is popular and greatly appreciated by people. This is, in a sense, true and is based on the number of applications made for proceedings under Section 8. But we must also take into consideration the views of the defendants. It may suit the convenience of those, who without payment of court-fees can have the chance of getting something from the jirga if they have a hopeless case in a regular civil court. The defendant, on the other hand, who relies on his legal rights which are sure to be enforced in a civil court cannot favour proceedings under Section 8, Frontier Crimes Regulation. A plaintiff who honestly believes in the strength of his case would rarely prefer proceedings under Section 8, in which, as we have already pointed out, legal rights are not necessarily given effect to; he would naturally prefer regular civil courts where an erroneous decision of the trial court can be set right by the court of appeal. Liability to pay court-fees cannot appreciably affect his choice of forum as he can always recover it from his adversary in case of success as part of the costs which generally follow the event.

Though a majority of cases disposed of under Section 8 relate to 'rasmana' and 'sharmana' the Deputy Commissioner can take cognizance of claims to property of substantial value. Instances have occurred in which this has been done. Khan Sahib Syed Mohd. Ashraf, a pleader of Kohat, who was professionally interested in the case to which he gave reference mentions a pre-emption case which was dealt with under Section 8, Frontier Crimes Regulation, and to a case in which civil litigation ending in the decree of the Privy Council in favour of the son of Khan Sahib Khushdil Khan deceased. The son's legitimacy was questioned by the brothers of the deceased but was affirmed by their Lordships of the Privy Council. On that finding he had a preferential claim to the estate

of his father which was of considerable value. It is said to be worth about five lakhs. In spite of such a decree proceedings under Section 8 were feared and he had to forego his interest to a substantial extent in order to purchase immunity from such proceedings which were threatened.

Mr. Ladha Ram, B.A., LL.B., Pleader of Bannu, says :—

> "In 1910 or 1912, Manu Singh, Dalla Singh and Lal Singh, obtained simple money decrees against Khan Badshah of the Bakka Khel. Execution was taken out several times but without success. The judgment-debtor successfully approached the Deputy Commissioner for proceedings being taken under Section 8, Frontier Crimes Regulation. In spite of the decree-holder's protest such proceedings were taken. Partial satisfaction was given to the decree-holders and the rest of their claim under the decree was washed out."

The only object of civil disputes being settled under Section 8, Frontier Crimes Regulation, is to prevent the breach of the peace. If it is really threatened the mere fact of the Deputy Commissioner assuming jurisdiction cannot prevent the apprehended breach of the peace. In the majority of cases civil proceedings must be supplemented by action under the security proceedings or those under Sections 145 and 146, Criminal Procedure Code, which are far more effective for that purpose than civil proceedings to decide the controversy itself. In cases in which immovable property is in dispute, it can always be attached under section 146, Criminal Procedure Code, so as to remove the bone of contention for the time being. In all other cases and even in those in which immovable property is attached one or more of the parties can be bound over to keep the peace.

That part of Section 8 which confers jurisdiction on the Deputy Commissioner to take cognizance of a case in which one of the parties is an inhabitant of the tribal area is, in our opinion, salutary having regard to the conditions prevailing in this Province. As a matter of fact Section 8 was intended mainly for this class of cases as the following extract from the objects and reasons in reference to Section 8 of Regulation 3 of 1901 will show :—

> "..... This section is valuable in supplying means for prompt settlement of claims by transborder men against our subjects. It is also largely used, especially in Kohat, for settlement of claims to customary payment of 'damages' or compensation in cases of breach of betrothals, of marriages with girls or widows without consent of their male guardians. But its chief value lies in facilitating the disposal of genuine claims by transborder men for debts due from British subjects. In the correspondence about the reorganization of Frontier administration stress was laid by all officers upon the intimate social and business relations between the clansmen beyond, and the residents within, our border. Claims arising out of marriage, betrothal, sale of cattle, money advances to tenants to British territory, and such disputes are numerous. It is useless to refer the transborder man to the civil courts. Even if he understood their procedure, and lived nearer to Kutcheri, the courts cannot serve summonses on his witnesses. Genuine claims may singly be petty, but if unsatisfied or unnoticed by authority they lead to reprisals, and in the aggregate tend to create serious trouble Mr. Merk suggests that after the words 'or a breach of the peace' there be added 'or in which the plaintiff or defendant is a resident of independent territory and the dispute does not relate to immovable property'."

This class of cases invariably involves claims to petty amounts. There are hardly any occasions for immovable property being in dispute. It is designed for the convenience of trans-border people and of British subjects who have dealings with them. Cases in which larger claims may be involved, as will seldom be the case, should not be excluded from the jurisdiction of ordinary civil courts. Mr. Almond, District and Sessions Judge of Peshawar, is also not in favour of all cases in which one of the parties belongs to the tribal territory being excluded, as inhabitants of tribal territory sometimes enter into partnership relations with residents of British territory for extensive business. We are told that cases between inhabitants of the two territories involving claims exceeding Rs. 200 are rare. In our opinion, all the requirements of this class of cases will be met by a provision that in all cases in which one of the parties

resides in tribal territory the Deputy Commissioner will have exclusive jurisdiction to entertain and try suits not involving claims to immovable property in which the value of the subject matter does not exceed Rs. 500. For an exhaustive list of cases within the jurisdiction of the Deputy Commissioner, the schedule appended to the Provincial Small Cause Court Act may be usefully adopted. All other cases in which larger stakes may be involved should be cognizable by the ordinary civil courts. If an inhabitant of the tribal territory has business connections in the British territory and has, therefore, occasion to be involved in litigation for substantial amounts, he must submit to the jurisdiction of ordinary courts. The inhabitants of British territory should likewise take the consequences of his dealings with a foreigner, which he should have foreseen and execute his decree as best as he can. We see no difficulty in effecting service on a defendant residing in tribal territory as substituted service provided for by the Civil Procedure Code can always be resorted to.

The position of the Council of Elders, in cases under Section 8, Frontier Crimes Regulation, resembles that of arbitrators. Ordinarily, a reference to arbitration is by consent of parties ; but compulsory arbitration is not unknown to law and was provided for in certain enactments. In such cases parties are called upon to appoint arbitrators ; and if they fail to agree, the Presiding Officer can do so considering reasonable objections to his nominations. Provisions in this behalf already exist in the second schedule to the Civil Procedure Code, paragraph 5. The Deputy Commissioner should have power, if he elects to exercise it, of making a reference to arbitration in cases in which one of the parties is an inhabitant of tribal territory. Such arbitration should, however, be limited to questions of fact. Accordingly, the Deputy Commissioner should be empowered to refer all disputed questions of fact to arbitration by an equal number of arbitrators nominated by the parties and an Umpire to be nominated by the Deputy Commissioner himself. On receipt of their award, he (the Deputy Commissioner) should dispose of the case as provided for by the Code of Civil Procedure. No appeal should lie from the decree passed by the Deputy Commissioner ; but a revision within the limits laid down in Section 25, Provincial Small Cause Court Act, should lie to the Judicial Commissioner. The Deputy Commissioner should be empowered to delegate his powers in this respect to any senior officer subordinate to him, for example the Assistant Commissioner or an Extra Assistant Commissioner. This procedure will not, on the one hand, appreciably increase the work of the Deputy Commissioner ; and will, on the other hand, meet all the possible objections to which we have referred. Parties should be entitled to be represented by legal practitioners in proceedings before the Deputy Commissioner. All other cases of civil nature should be exclusively triable by the ordinary civil courts.

CHAPTER VI.

Trial of Criminal Cases.

Section 11 may be usefully quoted at the outset :—

Criminal references to Councils of Elders.—Section II (1). Where, in the opinion of the Commissioner or Deputy Commissioner, it is inexpedient that the question of the guilt or innocence of any person or persons accused of any offence, or of any of several persons so accused, should be tried by a Court of any of the classes mentioned in Section 6 of the Code of Criminal Procedure, 1898 (V of 1898), the Deputy Commissioner may, or, if the Commissioner so directs, shall, by order, in writing, refer the question to the decision of Council of Elders, and require the Council to come to a finding on the question after such inquiry as may be necessary and after hearing the accused person. The members of the Council of Elders shall, in each case, be nominated and appointed by the Deputy Commissioner.

(2) Where a reference to a Council of Elders is made under sub-section (1) and the members of the Council have been nominated, the names of the members so nominated shall, as soon as may be, be communicated to the accused person, and any objection which he may then make to the nomination of any such member shall be recorded. The Deputy Commissioner shall consider every objection made by an accused person under this sub-section, and may, in his discretion, either accept or reject the objection, provided that in the latter case, he shall record his reasons for so doing. The Deputy Commissioner shall, after disposing of any objection made by the accused person, appoint the members of the Council.

(3) On receipt of the finding of the Council of Elders under this section, the Deputy Commissioner may—

(*a*) remand the question to the Council for a further finding ; or

(*b*) refer the question to a second Council ; or

(*c*) acquit or discharge the accused person or persons or any of them ; or

(*d*) in accordance with the finding on any matter of fact of the Council, or of not less than three-fourths of the members thereof, convict the accused person or persons, or any of them, of any offence of which the facts so found show him or them to be guilty ;

provided that a person discharged under clause (*c*) shall not be liable to be retried for any offence arising out of the same facts after the expiry of two years from the date of such discharge.

Section I.

Section II examined.

We have referred in the third Chapter to the opinions expressed in 1887 and to the animadversions on the Indian Penal Code, Criminal Procedure Code, and the judicial machinery which were considered responsible for increasing crimes of violence. As the result of a revolt from the judicial system, another system, differing from the former in many essentials, was devised ; and to implement it a tribunal, which, it was believed, would be free from the shortcomings of a court of law, was called into being. Such a system is propounded in Sections 11 to 20 of the Frontier Crimes Regulation. It is easy to criticise the judicial system, which is in vogue in this country and many others, and at times with force, having regard to certain unsatisfactory results in particular cases ; but the critic is hard put to it when he is called upon to substitute a better system or to suggest improvement which, while meeting the particular cases on which the criticism is largely based, can suffice for the generality of cases without leading to results more unsatisfactory than those which it is desired to guard against.

In view of certain necessary safeguards, every one of which is dictated by the sense of natural justice, the judicial system does not make for the expeditious disposal of cases and in view of certain principles, every one of which is dictated by prudence, crime goes unpunished in certain cases. Denial of the right to cross-examine and to criticise witnesses of the adversary and of the right to produce and explain the evidence of one's own witnesses, all with the help of a competent person is regarded as a denial of justice which in fact it is. Human nature being what it is, absence of control by a court of appeal, which is an important corrective, is considered likely to result in an arbitrary exercise of

power, if finality were to attach to judgments of trial courts. This principle is likewise unexceptionable. Right of appeal has, therefore, to be regarded as a necessary safeguard. To concede such rights makes rules of procedure and a record of the evidence indispensable, which make delay unavoidable. The choice thus lies between what should be regarded as a denial of natural justice and delay. Again, so long as it is accepted as a fundamental rule that the acquittal of a guilty person is preferable to the conviction of an innocent, evidence must be at least such as satisfies a prudent mind (a mind neither sceptical nor unduly credulous) that he is guilty, a certain number of crimes must inevitably go unpunished. The crime being so planned by the culprit as to leave no evidence, or the prosecutor acting without due diligence in collecting and producing evidence, or witnesses having adulterated their evidence with an amount of falsehood which defies all attempts to ascertain the truth, will in general be found responsible for the acquittal of a person suspected to be the culprit. The choice, therefore, lies between taking one of two risks, *viz.*, that of convicting an innocent man or that of acquitting a guilty one. A court of justice adopts the former course.

We have stated as briefly as we can the plea put forward by the advocates of the judicial system in justification of the delay and acquittals which form the two main indictments against it. The plea did not find favour with the opposite school of thought who made a bold constructive attempt to supply another system in the Frontier Crimes Regulation, which was supposed to be free from the drawbacks inherent in the judicial system and which was supposed to make for the expeditious disposal of cases and at the same time to ensure the conviction of most guilty persons. Accordingly, anything which contributed to delay or to acquittal has been eliminated. This could not have been done without dispensing with all rules of procedure, evidence, right of cross-examination and of address through a legal practitioner and right of appeal. Familiarity with legal principles being deemed to be harmful, if anything, in administering such a system, a tribunal, called a Council of Elders of Jirga, consisting of laymen, presumed to possess robust common sense, sound judgment and local influence, was provided to administer justice according to their own notions of equity. It was believed that the absence of safeguards, which the judicial system provides and to which we have made brief reference would be compensated for by the peculiar advantages, with which the new system was credited. The tribunal and its frame are inspired by a system which obtains in tribal areas, where crime is believed to be less than in British Territory.

It cannot fail to strike a student of this system that its founders have no great belief in its efficacy, as the judicial system has been retained side by side with it and the domains of the two left undefined. The Deputy Commissioner has to determine in each individual case whether it is to be tried judicially or under the provisions of the Frontier Crimes Regulation, which provides that " where, in the opinion of the Commissioner or Deputy Commissioner, it is inexpedient that the question of the guilt or innocence of any person or persons accused of any offence.....should be tried by a Court constituted under the Criminal Procedure Code, such question may be referred to the decision of the Council of Elders ". The section gives no indication of any test for determining the expediency or otherwise of choosing one system or the other. The Deputy Commissioner is the sole judge in each individual case as it arises, and his power in this respect is not open to question, it seems, even in revision.

The Regulation of 1871 expressly provided that reference to the decision of elders should be made when " sufficient proof is not forthcoming for judicial conviction ", the underlying idea being to " graduate ", the sentence with the evidence. Under that Regulation, the jirga, which had power to sentence, could not punish with imprisonment but with fine only. The language of the Regulations of 1887 and 1901 was so widened as to extend the Deputy Commissioner's powers not only to cases in which sufficient proof was not forthcoming but to other cases as well, as for instance, those in which it is considered desirable to have a settlement effected on payment of blood-money or otherwise. No directions of a departmental nature were issued in this behalf before 19th July 1920 when Sir Hamilton Grant, the then Chief Commissioner, issued a circular for the guidance of officers in administering the Frontier Crimes Regulation. We extract the following relevant paragraph :—

" A circular order governing the procedure to be followed in cases under the Frontier Crimes Regulation has been issued, and will shortly be in the hands of all officers of the Province. That circular is in no sense confidential, and it

has the same binding force as circulars issued by the Judicial Commissioner for the guidance of judicial officers. Its observance is obligatory, and it should be mastered not only by officers exercising powers under the Frontier Crimes Regulation, but by all subordinate officials of their courts, and the investigating and prosecuting staff of the police.

Officers on studying those orders will doubtless remark (possibly with storm) that they imply not only a revolution in our present methods of using the Frontier Crimes Regulation, but a certain condemnation of those methods. They imply both. Indeed this condemnation is even stronger than it was possible for me to recite in a public document. I am anxious that all officers should know and appreciate the reasons which have induced me to adopt this course. And I am confident that, when they do so, I can rely not only upon that close observance of rules which discipline dictates, but upon their hearty co-operation in what is partly an experiment and partly a return to the original purpose of the Regulation.

I do not desire to throw the entire responsibility of the present unsatisfactory situation upon officers who have been entrusted with powers under the Frontier Crimes Regulation, still less do I wish to imply any criticism of the policy of my predecessors in office. They indeed realised, as I do, the prevailing tendency to an abuse of the principles of the Frontier Crimes Regulation. But attempts to check this abuse have been handicapped through by the *vis inertiae* of gradually crystallising tradition. It has been difficult for Magistrates especially the more junior, to resist this, and when they have been personally unacquainted with previous confidential references, pronouncements of policy, or *obiter dicta*, they have been content to rely upon previous practice as indicated to them by the permanent staff of their courts..... ". After recounting the previous history and the opinions of Sir Frederick Cunningham (already quoted by us) the circular proceeds :—

" .....4. The point which clearly emerges is that we have no right to establish what we imagine to be a customary and tribal tribunal merely as a means of securing a conviction which the Criminal Procedure Code will not allow, or to pass by such a device the same sentences as the Indian Penal Code admits after a regular trial.

" If our procedure is customary and tribal, it must be so throughout. Not only the process, but the result, must be in accordance with popular opinion. The tribal settlement of a blood feud, the infliction of a fine for murder as a means to such settlement, the composition of offences not compoundable under the Criminal Procedure Code, and the lenient treatment of technical crime with a view to future peace are just as legal now as they were before 1887. But the fact is being gradually forgotten.

" Many Magistrates seem unaware that Section 12 of Regulation IV of 1901 legalises a sentence of fine only even for the most heinous offence."

" 5. The circular order will show that certain offences, those which must be recognised as crimes and should receive, whether the trial is by Jirga or otherwise, severe punishment. Such offences are dacoity and murder for the sake of gain, armed burglary, and professional and habitual crime. To these must be added crimes originating from customs which, though still condoned by Pathan opinion, are such as a civilised administration cannot possibly assist in crystallising. These include murders marked by exceptional deliberation and brutality and the cowardly mutilation of women.

" 6. But there are many offences regarded by British Law as offences against the State which by the custom of the people are purely " torts ". To the popular mind the injured person or his relatives alone are concerned. If they are satisfied, justice has been done. Such offences include many cases of homicide, grievous hurt and mischief, where they amount to reprisals against person and property in pursuance of the Pathan code. These do not require ' punishing ' as much as ' settling.'. I know that many officers may point with misgiving to anticipated ' outbreaks of lawlessness ', and may express alarm at what they consider implies a weakening of criminal administration. I believe, on the contrary, in the efficacy of a system which secures popular approval to our methods, and which indicates that we desire justice between man and man rather than the rigid maintenance of the State's position as the repressor of crime committed against itself. As Sir F. Cunningham pointed out in 1899, the State in criminal administration is to the Frontier community a meaningless abstraction. The policy of adapting punishment to popular ideas of justice is so little a sign of weakness that it was the policy adopted by the great historical

administrators of this border, whose names are synonymous with vigour and energy, and it is that approved by a consensus of the most experienced opinion now available in the Province. From these general considerations there emerge certain concrete principles covered by the circular :—

" (*a*) References to jirga are not to be made merely to secure convictions which an ordinary court of law will refuse to admit.

" (*b*) References are largely to be made with a view to settling personal feuds.

" (*c*) The jirga must recommend a sentence, and this recommendation must be duly considered.

" 7. It follows from (*b*) that Section 11 should be far more freely used than it is for offences other than homicide, especially where women and ordinary injuries to person and property are concerned. There seems to be a prevalent but erroneous impression that Section 11 is reserved for heinous crime. It is remarkable that the correspondence of 1889 draws attention to the success of the jirga system in stopping cases of rick-burning and setting fire to cowshed in Hazara. I see that during the year 1919 only two cases of mischief were referred to jirga under Section 11 in that district. In the same district indeed no cases relating to marriage (the most appropriate of any for jirga decision) were so referred on the criminal side.

" 8. Many cases, of course, are instituted on the civil side under Section 8. But where they have been brought originally as criminal prosecutions, it is often easier to make the reference under Section 11 than Section 8 for many reasons. The complaint will frequently refuse to abandon his criminal prosecution at the outset, as he fancies that this gives him the best chance of redress. But he is brought to reason when a jirga has confronted the parties and suggested a satisfactory settlement. There is again the fact that to acquit or discharge the accused before the reference is made weakens the chances of bringing home the responsibility. Section 18, Frontier Crimes Regulation, is perfectly clear. A reference under Section 11 can result legally in a decree under Section 8 and frequently it should do so. I commend Section 18 to the attention of all officers working the Frontier Crimes Regulation, for its provisions are usually overlooked.

" 9. In this connection I realise fully the importance of ensuring that these settlements are carried out promptly and completely. We must not, when using Section 8, shelter ourselves behind the Civil Procedure Code in granting barren and unrealisable decrees. As in criminal cases, tribal custom, once called in to assist justice, must be allowed its true evolution. For this reason I have no desire to interfere in existing orders which recognise that detention in the political lock-up may often be used to ensure that refractory judgment-debtors under Section 8, Frontier Crimes Regulation, do not vitiate the settlement. But an equally important consideration is that decrees must be adapted to the circumstances of the judgment-debtor. Nothing is more stimulating to a recrudescence of disputes than decrees which are far beyond the means of the judgment-debtor to satisfy.

" 10. As regards (*c*), the rule is, as regards present practice, an innovation. It is really nothing new.

" A letter of the Punjab Government in 1886 recites : ' The Lieutenant-Governor suggests that the jirga should find the fact of guilty or not guilty, or make recommendations for the settlement of the case, and where a person is found guilty suggest his punishment by fine or imprisonment, or both, or by transportation or imprisonment being limited to seven years.' The principle that jirgas should recommend the penalty was one which preceded and justified the admission of sentences of imprisonment on their findings.

" I have a further word to say on the subject of sentences. They tend in this Province (and I must here include those passed by ordinary Courts of Laws as well as by officers empowered under the Frontier Crimes Regulation) to be far heavier than those inflicted in European countries. They have had no marked success in repressing crime, and they are particularly inappropriate where a large majority of offenders escape justice entirely. To quote the words of one of the most experienced officers of this Province : ' It is the certainty and not the severity of punishment which is the real deterrent.' Yet Courts endeavour to remedy their powerlessness to bring home crime in general by exceptional severity in particular cases. No policy is more likely to distort the

popular attitude towards crime, to alienate the people's opinion from the administration of justice, and to limit their co-operation to a meaningless gamble on an unintelligible game. There used to be an idea that a Magistrate who habitually gave savage sentences was a strong Magistrate. Nothing could be more preposterous or puerile than such an idea. The terms weak and strong are no more appropriate to Magistrate than to policies. A policy is wise or unwise—not strong or weak. So with Magistrates."

His successor in office, Sir John Maffey did not approve of the policy adumbrated in the circular above quoted and issued another rescinding the first in most respects and giving the following instructions :—

"4. .....

"(*a*) No case should be referred to a jirga under Section 11, Frontier Crimes Regulation, except by the order of the District Magistrate himself after he is satisfied that there are good grounds for believing the accused person to be guilty, even though the standard of proof is not such as to secure a conviction in the regular Courts. The necessity to refer a case to jirga on the criminal side should be viewed as a definite sign of the failure of the investigating agency ; but the likelihood that the case may have to be so dealt with should be regarded as no reason for the police to relax their efforts. It must be remembered that a jirga, equally with the regular Courts requires all the assistance which police investigation can give it. As, however, the accused is not entitled to be represented by counsel before a jirga, the police should likewise not appear, except as ordinary witnesses, before it. The procedure contemplated by the Chief Commissioner is that the case should be heard in the ordinary way before the Magistrate after which the latter, if he thinks there are grounds for trial by jirga, should submit his file with the record of evidence to the District Magistrate with detailed reasons for the recommendation that the case should be tried by jirga.

"(*b*) In referring cases to Councils of Elders under Section 11, Frontier Crimes Regulation, District Magistrates should require them to give a finding on the guilt or innocence of the accused, but in regard to punishment, in the event of conviction, should be guided only by their own judgment and the provisions of the law.

"(*c*) Under instructions recently given, lists of approved jirga members have been prepared in all districts. These lists should be maintained and care should be exercised in selecting the jirga ; the same members should not be continually chosen, as the 'professional jirga member' is to be avoided. The large jirga, known as the Shahi jirga, meeting once a quarter or at longer intervals for the decision of a large number of cases placed before it, or committees of its members at one time should now be discontinued. Each jirga should be selected *ad hoc* and should ordinarily visit the scene of the crime which it investigates."

The records of cases examined by us are for the years 1921—30 and show not only that in accordance with the instructions contained in the circular last quoted, in the majority of cases, there was hardly any evidence or there was evidence but not sufficient in quantity or quality for a judicial conviction, but also that references were made in cases in which there was evidence which if believed, would warrant a conviction in a court of law. It seems to be generally assumed that courts of law require too high a standard of proof and that in arriving at findings of fact they are unduly hampered by technical rules of law. With all the respects due to Sir John Maffey, we think, speaking generally, that it is a contradiction in terms to say that "there are good grounds for believing the accused to be guilty" and yet "the standard of proof is not such as to secure a conviction in the regular courts". Unless "good grounds for believing the accused to be guilty" means nothing more than suspicion more or less strong which does not exclude reasonable possibilities of innocence they will in general come up to the standard of proof required by law. We put a definite question to a number of official witnesses as to whether they would act on anything less than the evidence which a prudent man, not a lawyer, would consider sufficient to base a finding upon. Their answer was in the negative. Now, this is exactly the test of proof which the Indian Evidence Act provides. We may

usefully quote the definition of " proof ", which is to guide courts of law. It runs thus :—

> " A fact is said to be proved when, after considering the *matter* before it the Court either believes it to exist or considers its existence so probable that a prudent man ought under the circumstances of a particular case, to act on the supposition that it exists."

It should be noticed that the standard here set forth is based on no technical requirements of law, but on the common sense of a ' prudent man '. We are here considering what the law requires and not what the idiosyncrasies of individual judicial opinions lead to. If some of them insist on too high a standard of evidence they should be corrected or their personnel should be improved but there is no justification to supersede the system which, as shown, is not at fault.

If it is a fact that the Council of Elders and the Deputy Commissioner insist on the degree of proof which prudence demands, the only difference between their standard and that of a court of law will lie in the exclusion by the latter of evidence which is declared by law to be inadmissible. The rules of admissibility are not meant to exclude evidence which is of any value. Every ' relevant fact ' which gives rise to an inference of guilt or innocence is admissible. We tried to elicit from a number of witnesses as to what evidence is excluded by a court of law which is of value before the Council of Elders and the only reply which could be given was " hearsay ", " evidence of repute " or " belief stated on oath ". Unless this class of evidence materially adds to the proof which a court would regard as insufficient or unreliable or the Council of Elders can find additional evidence, which will improve the evidence which can be laid before a court, no case of inexpediency of a judicial trial can arise. This brings us to a consideration of the practical side of the matter. Immediately after an occurrence, a police officer, whose ability and experience are far superior to those of jirga members (whose description we have already given) arrives on the scene. He is generally a man of this Province, if not of the same district well acquainted with the conditions obtaining in his circle and is expected to collect all the evidence material to the case. We have been told that almost every murder case in which an accused is named is sent up to the Magistrate.* It is on the recommendation of the magistrate, made after recording the evidence, that the Deputy Commissioner makes a reference to a Jirga. Evidence is overwhelming to the effect that jirga members, such as can be had, do not possess better means of obtaining evidence, if they make an attempt to do so at all.† The only evidence, as already said, which is available to the Council of Elders is heresay and that afforded by " general repute " or " belief stated on oath ".* Secret enquiries, which jirga members profess to make, do not enable them to find any direct evidence. It is, again, evidence of " belief ", expressed by certain persons. " Hearsay ", " repute " or " belief " in the guilt or otherwise of a person accused is not traced to any direct evidence.* Any one who is to act on this class of evidence should naturally be led to put the question : " why is it said or believed that the person in question is guilty or innocent " ? The person making the statement from " hearsay " or " belief " is bound to give some source of his knowledge or confess ignorance thereof. If the original source discloses the existence of direct evidence it could not have failed to reach the police officer making the investigation. We have evidence that jirga members cannot discover what the police failed to find.‡ Witnesses who wish to screen the offender or are otherwise interested in concealing the truth and do so in spite of local Lambardars and others whose assistance the police have would likewise do so with jirga members who have no influence in the village. If such evidence is not traced to any source it must be referable to the alleged motive or to other evidence, in itself insufficient, which the police did or could collect and which was already before the magistrate. In general, the complainant naming the accused person gives the reasons of his belief in the complicity of those accused by him. Some motive is always assigned by the accuser. " Hearsay ", " repute " or " belief " if not traced to any direct evidence, will invariably be traced to such motive or to other evidence admissible in court. In these circumstances, the so-called additional evidence, which the Council of Elders are supposed to find, is wholly illusory. The evidence

*Mr. Caroe, I.C.S., Deputy Commissioner, Peshawar.

†Malik Khuda Bakhsh, Public Prosecutor, Derajat ; Mr. Saaduddin, Additional Judicial Commissioner and Khan Bahadur Gulab Khan, Kohat.

‡Karimdad Khan ; Mohd. Aslam Khan.

admissible in a court of law cannot improve only because it is repeated by persons, one or more, or even the whole village.

The only exception that can occur to us is in respect of evidence which, good in itself, may for technical reasons, be inadmissible in a court of law. For instance, a confession made by a person accused, while in the custody of a police officer, but not before a Magistrate, in circumstances which exclude all suppositions of unfair means having been employed, is of value but not admissible. Cases of this kind are, however, very rare and seldom form a ground of reference to the Council of Elders. We asked a high judicial officer, who favours trial by jirga, to mention cases in which it is expedient to make a reference to a 'Council of Elders'.* He said: "Cases in which a clearly guilty person would escape conviction in the ordinary court owing to lack of strict evidence, *e.g.*, a case in which a person was murdered outside the village at dead of night in consequence of a blood-feud; the whole village knows who is the murderer but no proof is "forthcoming". What is meant by 'a clearly guilty person' is no more than a strongly suspected person. 'The whole village knows who is the murderer' means no more than that all the inhabitants infer from the well-known existence of the blood-feud that a certain person is the murderer. Why should the court not regard him as a 'clearly guilty person'? Obviously because it is not unreasonable to think that the man was killed out-side the village in the dead of night in the course of an encounter with an armed dacoit or thief whom he challenged, or that he had within a few days before contracted a liaison with a woman and the fact had by then come to the knowledge of only a few, but the husband of the woman did suspect and killed him or again, the murderer mistook him for another in a dark night and killed him (we have actually come across such instances in decided cases). We have little doubt that an efficient police officer can find circumstantial evidence excluding these possibilities and establishing to the satisfaction of the court that the suspected person is guilty. But assuming there is no other evidence, should a 'prudent man', whether he occupies a seat on the bench of a court or is one of the jirga members, take these reasonable possibilities into consideration? What difference does it make whether the inference of guilt is to be made by one or the other? If the jirga is expected to give a verdict of guilty, in these circumstances, it is impossible to avoid the conclusion that it is expected to base its finding on suspicion, which may or may not be strong. It follows that the 'expediency' contemplated by Section 11 Frontier Crimes Regulation and as interpreted by the Chief Commissioner's latest circular already referred to and as understood by many officers means the desirability of securing conviction on suspicion not amounting to proof. In practice motive which can be suggested (and motive is mostly an inference from facts) leads to the 'moral conviction' on which a reference is made and without corroboration to an appreciable extent jirgas convict. In cases of blood-feud the question is greatly complicated where the family interested in taking revenge has many adult members any one of whom might have alone committed the murder but all are being accused.

Let us take another view of 'expediency' propounded by another officer,† who illustrated as follows:—

"....'A' is murdered while sleeping. When the inmates of the house wake up on hearing the report of the gun or pistol shot they find no trace of the assailant. The relative of the murdered man and other village people fix the guilt on such of their enemies as are considered by them to be likely to have committed the murder. They invent a story to the effect that the assailant was actually recognised on the spot by the inmates of the house, that he had been seen in the neighbourhood of the house previous to the murder and subsequently after the murder. The police, however, find on investigation that the murderer was some-one else and find a certain amount of evidence in support of their theory, but the definite statement of the complainant contained in the first information report and the statement of others militate against the police theory in a court of law, though the jirga may arrive at a correct finding as regards the identity of the murderer". *Exhaypothesae* the police cannot find evidence which will satisfy the court and the little they do get stands contradicted by the complainant and other inmates of the house who alone could have given direct evidence. Why is it that the police cannot satisfy the court of the truth

*Mr. Fraser, I. C. S., The Judicial Commissioner.
†Mr. Fooks, Senior Superintendent of Police, Peshawar.

of their theory and can satisfy the jirga ? There is no technical view of law involved. It is a matter of weighing and appreciating evidence. The jirga members with all the lack of qualifications we have indicated elsewhere cannot be in a better position in this respect. It amounts to an admission that the evidence will not stand the test which a prudent man like the presiding officer of a court is likely to apply and that the little evidence, contradicted by direct evidence of the inmates of the house, raised no more than a suspicion that the person accused by them (police) is guilty. We put this view to Mr. Fraser, the Judicial Commissioner, and again quote from him :—

" *Question.*—Do you think that those cases should be referred to jirga in which the evidence of the professed eye-witnesses and others is rejected by the Magistrate owing to discrepancies in their statements or for other reasons ?

" *Answer.*—Even in such cases, if there is conviction in the mind of the magistrate that the accused is probably guilty, it is not inexpedient that the cases should be referred to jirgas. There is no distinction between absence of evidence and unreliable and bad evidence.

" *Question.*—If the magistrate has to be convinced by nothing else but the evidence before him, and he is not thereby convinced, do you think the case is one which it is not inexpedient to be referred to a jirga ?

" *Answer.*—The unreliable evidence being eliminated, if motive and surrounding circumstances raise a strong probability that the accused has committed an offence, he may well refer the case to a jirga."

We entirely agree with the view that in its result unreliable evidence is, for all practical purposes, no evidence and that it is only the motive and surrounding circumstances which leave an impression on the mind of the tribunal which has to consider such evidence. Such impression can at best amount to suspicion of guilt varying in strength according to circumstances.

It follows that in whatever language it may be expressed, the policy underlying the Frontier Crimes Regulation is to obtain the conviction of persons to whom suspicious circumstances point to be guilty, though positive proof of guilt whether judged by the judicial standard or otherwise, is not forth-coming. The inference of guilt is to be made from such circumstances unless the accused can successfully rebut them.

Section II.

Practice in the trial of criminal cases.

The statements of witnesses examined by us and the examination of a large number of records of cases decided on the findings of jirgas establish to our satisfaction that references to Councils of Elders are made in cases in which (1) there is no evidence of any kind, except that afforded by a motive suggested by the complainant, (2) there is evidence, but not sufficient, to warrant a conviction in a court of law, or (3) there is evidence sufficient for judicial conviction, but because of discrepancies or glaring improbabilities, or other ground of expediency, a reference to jirga is desirable.

A case is seldom referred to the Council of Elders in its initial stages. The police investigation results in the case being sent up to the court of the Magistrate concerned, and he decides, after recording evidence, whether the case should be tried by himself or committed to the Court of Sessions (if it is triable by that court) or should be referred to the Council of Elders. If, in his opinion, the chances of conviction in a court of law are doubtful, he recommends to the Deputy Commissioner that a reference be made to the Council of Elders. At an average, 55 to 66 per cent. of murder cases are referred to Councils of Elders.* Statistics of cases referred in each year will be found in the appendix. In a small percentage of cases, the Deputy Commissioner requires the Council of Elders to proceed to the spot for further enquiries.† In all other cases they proceed to record their findings on the evidence collected by the police and already examined by the Magistrate. The police record and the Magistrate's proceedings are before them, and they may re-examine any witnesses they like.‡ Their proceedings are generally conducted in the court compound.

*Mr. Almond.

†Captain Hay, President, Bar Association, Abbottabad, Messrs. Saaduddin, Additional Judicial Commissioner, Sardar Shah Singh, E. A. C., I Class Magistrate, Radha Kishan Puri, Safdar Khan, Ladha Ram, K. B. Ghulam Haidar Khan, Bannu, R. S. Jhinda Ram, D. I. Khan.

‡Captain Hay and Saaduddin, Additional Judicial Commissioner.

Whenever they make local enquiries, the evidence is the same as it was before the police and the Magistrate, with the possible addition of the evidence of witnesses who depose from hearsay or belief. In a number of cases, the finding of the Council of Elders recites the fact that " open and secret " enquiries were made. It is in the evidence of respectable persons, some of whom are jirga members, that secret enquiries are not, in fact, made. This has become a stereotyped phrase with the petition-writers, who are often employed (except in Peshawar, where this practice is much less common) to write out the findings of Councils of Elders and with the jirga members themselves and finds a place in almost every finding of jirga members.* The names of the secret informers, if any, are not mentioned in the finding. They are not made known even to the accused or to the Deputy Commissioner, unless the latter questions the jirga members himself.† Mr. Karim Dad Khan, a jirga member and an Honorary Magistrate, tells us that nobody ever told him secretly that he could give evidence, direct or circumstantial, which could give rise to an inference of guilt in a court of law. At best, by such enquiries the " belief " of certain influential and reliable persons is ascertained.

Where direct evidence, reliable or otherwise, is not forthcoming, jirga members often base their findings on evidence of motive, which is frequently not analyzed or carefully examined, and that afforded by " hearsay " or " belief " of certain persons, which, as already remarked, is generally referable to the evidence of motive.

Another method of arriving at a finding, in the absence of evidence, is compurgation, or statements by referees of the parties.‡ In view of perjury and false accusation, which are rampant, and have been the subject of discussion elsewhere, the value of such evidence is *nil*. The proceedings before the jirga very often do not take more than a day in cases in which they have to decide without making local enquiries. Sometimes they last only a few hours.§

The Councils of Elders are not required by the Regulation to reduce their proceedings to writing. The records of decided cases show that in the Peshawar District such proceedings are usually recorded, but no statements of witnesses are reduced to writing in Bannu, and the record of jirga proceedings consists of their findings only. In other districts there is no uniformity of procedure in this respect. We have had occasion to show, in dealing with the constitution and personnel of Councils of Elders, that a large number of jirga members are not literate and many of those who are literate cannot themselves write out depositions and their own findings, which are therefore prepared by some petition writer.

It is said that most jirga members start with the assumption that they are expected by the Deputy Commissioner to convict.‖ While fully believing that Deputy Commissioners do not deliberately influence jirga members for obtaining findings of conviction, the whole procedure which results from the provisions of the Frontier Crimes Regulation is calculated to give an impression to the average jirga member that in the Deputy Commissioner's view the accused ought to be convicted. A magistrate makes a recommendation for reference to jirga on the ground, express or implied, that though the evidence in the case is not sufficient or, if sufficient, not reliable for conviction, the circumstances produce a " moral conviction " that the accused is or are guilty. The fact that he does not discharge or acquit the accused is also indicative of the same view. The Deputy Commissioner, if he decides to make a reference, can be said to endorse that view. The provision which empowers the Deputy Commissioner to make a second reference on receipt of the finding is always present to the minds of the Council of Elders. In almost every Administration Report reference to a higher percentage of conviction through jirgas in appreciative terms might give an impression to the jirga members that they would win the approbation of superior officers if they convict the accused tried by them. Instances of jirga members changing their opinions on remand or on discovering that the Deputy Commissioner thought differently¶ are many. A striking case of this kind is King Emperor *versus* Naushad and other residents of Yar Hussain in which the jirga first convicted one out of 9 or 10 accused but when the Deputy Com-

*Messrs. Khushal Khan, Mohd. Aslam, Ghulam Hussain, Saaduddin, Malik Khuda Bakhsh, Waliullah, Muaz Khan, etc.

†Captain Hay, Captain Mallam.

‡Mr. Karim Dad Khan, Honorary Magistrate and Jirga member.

§Messrs. Ghulam Hussain Khan, Dost Mohd. Khan, Saaduddin Khan.

‖Malik Khuda Bakhsh, Mr. Attaullah (See also foot-note on p. 50).

¶Abdur Rahim, Mr. Attaullah.

missioner remanded the case to the same jirga for reconsideration all except one were convicted. We quote two other instances from the *viva voce* examination of the representatives of the Mardan Bar Association :—

" .....Case No. 5 quoted by us passed through the hands of one of us in his professional capacity. Faiz Talab and a few others of Jowaggira were prosecuted for the murder of a certain man. The police investigated the case and did not challan any of the accused and had the case recorded as " untraced ". Subsequently a complaint was filed by one of the relatives of the murdered man charging the accused with murder, processes were issued against all of them and the case was referred to jirga, who held the accused not guilty. Their findings were not accepted by the Additional District Magistrate who appointed a second jirga which returned a finding of guilty. The accused were accordingly convicted of murder and sentenced to a long term of imprisonment. The accused remained in jail for about 3 years after which Sir Hamilton Grant, the Chief Commissioner of the North-West Frontier Province, received information that all the accused were innocent and he passed an order for their release.

" The case mentioned at No. 4 in our written reply, Crown *versus* Sher Dad of Maneri is peculiar in that the finding was not accepted and a second jirga was appointed which also returned a finding of not guilty. The Deputy Commissioner was not satisfied with this finding as well. He appointed a third jirga which returned a finding of guilty. This was accepted by him and he sentenced the accused to 14 years rigorous imprisonment....." Cases acquitted by the first jirga and referred by the Deputy Commissioner to a second, generally end in conviction. Unless the Deputy Commissioner is careful in preventing all chances of mis-construction, it is not unlikely that the jirga members will have the impression that an acquittal will not be liked by him. Many jirga members who are men of position and character may not be influenced by that feeling ; but the average jirga member, particularly one who is anxious to retain his position as such,—and the number of this class of persons is fairly large—will err on the side of convicting. Many jirga members have themselves testified to this feeling in their ranks.* In this connection, the following remarks occurring in the report on the Administration of Criminal Justice in the North-West Frontier Province for the year 1917 is significant :—

> " The position of a member of jirga is becoming a coveted distinction, and members are careful to avoid conduct which might deprive them of it ".

This, of course, refers to the improvement as regards the cases of corruption. The proceedings of jirga members and the extent to which they inspire confidence has been the subject of adverse comment, which in many cases is couched in very strong terms, by a large number of witnesses who have sent replies to the questionnaire or have given evidence before us.† Mr. Fooks, Senior Superintendent of Police, Peshawar, is of opinion that " there are weaknesses in the system.....there is a dearth of jirga members who may possess all the requisite qualifications.....and.....in practice the proceedings of jirga members are not conducted in an ideal manner. The tribal system is breaking down in the settled districts, and the jirga members as we now have are less responsible than they used to be ".

The Deputy Commissioner who is to act on the verdict of a jirga does not hear a single witness. He is not the magistrate who takes cognizance of cases sent up by the police. It is some subordinate of his—a magistrate 1st Class—who records evidence and then makes a recommendation to the Deputy Commissioner for reference to jirga. It is on such a recommendation that he makes a reference. Ordinarily the Deputy Commissioner does not disagree with the recommendation. The jirga which sits apart from the judge who has to decide the case, mostly give their findings on the police diaries and the magistrate's record.‡ How far they can minutely go through these papers it is difficult to say.

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*K. B. Ghulam Hussain, Municipal Commissioner, Peshawar. Messrs. Muaz Khan, Khushal Khan, K. S. Sayed Moha. Ashraf, President, Kohat Bar Association, Maulvi Ahmad Gul, K. S. Purdil Khan, retired Deputy Superintendent of Police, Khan Faqir Mohd. Khan, retired sub-Inspector, Mr. Abdul Manan Qureshi, M.A., LL.B., Secretary, Kohat Muslim Association, K. S. Sh. Abdur Rahman Khan, Municipal Commissioner, Jirga member, and Manager, Islamia High School, Kohat.

†Messrs. Kewal Krishan, Attaullah, Malik Khuda Bakhsh, P. P., Derajat, Saaduddin, Additional Judicial Commissioner, Mian Sarinddin (Peshawar Bar Association), Ladha Ram, Karim Dad Khan, Charanjit Lal, Abdur Rab Nishtar, K. B Ghulam Hussain Khan, Mohd. Aslam Khan, Khushal Khan, Waliullah, Ali Asghar, and others, Radha Kishan Puri, Abdul Hamid, E.A.C., Abdul Hakim, Gulab Safdar Khan, Gulab Khan, Representatives of the Bannu Bar Association, etc.

‡Captain Hay.

Assuming they, or at least one of them can read these records, which are partly in English and mostly in Urdu, depends on the personnel of the jirga. No cross-examination is possible except such as jirga members, if they are able and care to do, or the accused, who is illiterate, is capable of doing. We agree with the view expressed by most of the official witnesses that the representation of parties by legal practitioners before the Council of Elders is impracticable in the very nature or things. Yet we have no doubt that a certain amount of cross-examination of witnesses is absolutely necessary. This is all the more essential in view of false accusation and perjury which are rampant and are indulged in with impunity. Every witness before us, to whom the question was put, admitted the value of cross-examination but could only suggest that the parties themselves might cross-examine witnesses. The value of the evidence of witnesses stating from hearsay or belief or of statements made by compurgators will appear to be very different on a few questions being put

We are told that these methods are based on the tribal system in which cross-examination is unknown and is foreign to it. This is true, but the whole procedure as laid down by the Frontier Crimes Regulation is unknown to the tribal system. The police investigation, the regular magisterial inquiry according to the Criminal Procedure Code and Indian Evidence Act, and thereafter the proceedings before a jirga and its verdict followed by conviction and sentence of imprisonment and whipping by the Deputy Commissioner are wholly foreign to the tribal system. The mischief lies in fitting the mode of proof resorted to in the tribal system for a different kind of punishment or consequences, into a hybrid and novel system of trial resulting in fourteen years rigorous imprisonment.

A finding arrived at, in the circumstances described, is submitted to the Deputy Commissioner for whom an English translation is made. We entertain serious doubts if a Deputy Commissioner with all his onerous and distracting duties can gain mastery of anything but the salient features of the case. He can have little assistance from any of the parties. Detailed criticism of the evidence, except such as suggests itself to his own mind, is out of the question. As the accused is not entitled to be represented by a legal practitioner the Deputy Commissioner has to deprive himself of the assistance of the Government Pleader or Prosecuting Police Inspector.

Anyone who has had any experience of judicial work can testify to the value of detailed criticism of the evidence in a case. It is true, more time is spent and the patience of the judge is at times sorely taxed, but all aspects of the case are revealed and the chances of a mistaken judgment are minimised. It is frequently the case that an apparently incriminating circumstance is completely explained away by one of the parties drawing attention to another circumstance or that the evidence of a witness when read with something else not easily discoverable loses all value. Taking a dispassionate view of the matter, assistance derived from the legal profession cannot be despised and is indispensable in the administration of justice whether in a court of law or before any other tribunal the issues being always the same. In the atmosphere in which jirga cases are decided it is impossible to say that everything is done which ensures the ends of justice and which inspires confidence.

The fact that no appeal on facts is allowed from the Deputy Commissioner's decision is calculated to affect the character of the proceedings before him. A Deputy Commissioner will be more than human if the consciousness of having the last word on the question of the guilt or innocence of the accused before him does not in certain cases impart arbitrariness to his action. Anyone in that position will be prone to attach too great weight to his own views of the case.

The whole history of the Frontier Crimes Regulation leaves no doubt that it was intended to be used in cases in which (1) legal evidence is not forthcoming though circumstances point to a particular individual as guilty or (2) where in consequence of factional feeling or otherwise evidence is deliberately suppressed. The records of cases examined by us disclose the existence of the first class of cases which happen everywhere though not in as large numbers, as here. While cases of the second class, except those in which the parties compromised with or without the knowledge of the magistrate or jirga members, are so few as to be negligible. But we find numerous cases, in which there is no suggestion of the suppression of evidence and in which there is evidence in abundance, though open to criticism, sometimes serious, are referred to Councils of Elders for no other reason than the desire to preclude the

chances of acquittal by the trial court or court of appeal. The fact that the complainant and his witnesses have mixed falsehood which jeopardizes the success of the prosecution redounds to the prejudice of the accused. Except in cases of offences punishable with death or transportation for life, the Deputy Commissioner can pass heavier sentences under the Frontier Crimes Regulation than a magistrate can and as much sentence as a Sessions Judge would ordinarily pass. For this reason and also because jirgas accept indifferent evidence it is generally to the advantage of those interested in the prosecution that the case should be tried under the Frontier Crimes Regulation.

Mr. Samiuddin, Bar.-at-Law, a leading practitioner on the criminal side in Peshawar, stated from experience that sometimes a complainant deliberately creates flaws in the evidence on his own behalf to obtain a reference to jirga. The President of the Mardan Bar Association referred to a case in which his client was charged with the theft of a pair of shoes but hurt having been caused in course of the theft it was a case of robbery. A magistrate proceeded to try him. The counsel advised his client in the initial stages of the case to plead guilty which would have enabled him to escape with a light sentence. The prisoner, however, preferred to stand his trial and the counsel succeeded in greatly damaging the case for the prosecution in cross-examination but the magistrate felt persuaded to recommend a jirga trial which came off and resulted in the accused being sentenced to five years rigorous imprisonment. If the magistrate had himself tried the case and convicted the accused he could not have awarded more than 2 years. The moral to be drawn from the case is that an accused may get far greater punishment by successfully defending himself.

Cases are sometimes withdrawn from Sessions Courts for reference to jirga even at late stages. It should be borne in mind that no case can be committed to the Court of Session unless there is evidence which, if believed, warrants a conviction (sections 209 and 210 Criminal Procedure Code). Ordinarily, therefore, a case pending in a Sessions Court must be one in which there is evidence. We quote the following from the evidence of the Public Prosecutor, Derajat Division, which shows the practice as regards the withdrawal of cases from Sessions Court :—

" ..... Sometimes cases are withdrawn from the Sessions Court with a view to a reference being made to jirgas. I have to withdraw under the instructions of the District Magistrate.

I advise the withdrawal of a case if I find evidence has been suppressed or in the circumstances of the case it is impossible to have witnesses or there is some technical defect which would result in the acquittal of a case which ought to end in conviction. *I also advise the withdrawal of a case and reference to be made to jirga when there are such discrepancies in the statements of witnesses as would make their evidence unworthy of belief.* In such cases I take into consideration the views of the Deputy Commissioner who is responsible for making reference to jirga. I also recommend to the Deputy Commissioner that a case in which there was old-standing enmity between the parties and there is not sufficient evidence be referred to a jirga. Long standing enmity does not necessarily mean blood-feud. It may be due to other causes.

" Sometimes withdrawals are made towards the end of the trial.

" *I have the standing orders of the Deputy Commissioner that cases likely to fail in consequence of defects already mentioned should be brought to his notice.* I have to study every case and determine whether it should be judicially tried or should be referred to jirga. I am paid Rs. 16 per case for this work ", as also for other consultations.

We came across a case, in course of the examination of the records of decided cases, in which the Sessions Judge made a suggestion that a certain case be referred to a jirga. We are bound to say that in doing so he went beyond his province. The Chief Court of the Punjab had protested against a proposed section which required the Sessions Judge to make references to jirga and which was deleted in consequence.

Magistrates are in the habit of recommending cases for reference to jirgas in large numbers not only when there is no evidence forthcoming but also when there are flaws in the evidence, or other difficulties. If discrepancies have crept into the evidence or there is some improbability they take no risks. They adopt the safer course of having a trial before a jirga with whom such defects are not expected to count. Accordingly we have found numerous cases in which

jirgas have convicted on precisely the same evidence which the magistrate said was insufficient for conviction or unworthy of belief.

The table of cases referred to and convicted by jirgas, which will be found in Appendix III, will show that the percentage of cases tried by jirgas in the whole province between 1908 and 1929 varied from 50 per cent. to 72 per cent. In 1921 and 1922 it was over 86 per cent. in Peshawar. In 1915 and 1916 it was over 88 per cent. and 87 per cent. respectively in Kohat. In 1918 it was over 80 per cent. in Bannu. In 1908, 1910, 1916 it was respectively 100 per cent. (all 12 cases ended in conviction), 85 per cent. and 81 per cent. in Dera Ismail Khan. It was over 60 per cent. in 1929 in Hazara. The average of the whole Province was 62 per cent. in 1929. The question that emerges from these figures is whether there is such a great difference between the standards of proof required respectively by the magistracy and the jirgas. In about two-thirds of the cases referred to jirgas the magistrates declared that there was no evidence or that the evidence was insufficient or unreliable in a court of law while the jirgas convicted on such evidence. We have shewn elsewhere that jirgas can seldom improve evidence even if they go to the spot and that according to the Indian Evidence Act courts ought to be guided by the standard of a prudent man. On the other hand we are told that the jirga and the Deputy Commissioner ought to have the same standard of proof. The conclusion is irresistible that, either the magistrates require a higher standard of proof than is warranted by the law of evidence, or the jirga and the Deputy Commissioner are satisfied with less than what they should insist on. The conclusion we have reached, from the examination of the records, is that the truth lies midway between the two. The magistrates recommend jirga trials in many cases which they should themselves try. They should come to grips with the difficulties of the case rather than shirk them. They seem to attach little value to circumstantial evidence which is the only reliable evidence in cases in which the offenders chose such a time and place as to make direct evidence impossible. They consider direct evidence indispensable. For such evidence one has to depend on witnesses who are bound to make statements which are open to comment. It is in evidence that a number of cases are referred to jirgas through the improper exercise of discretion by magistrates.* The jirgas on the other hand are prone to accepting evidence of little value. Deputy Commissioners go by the verdicts of jirgas.

Numerous instances have come to our notice in which the police could have found circumstantial evidence which together with the evidence of motive might have established the case in a court of law. There is overwhelming evidence that police investigation is not infrequently perfunctory as the prospect of a jirga trial is seldom absent from the mind of the investigating officer† and that the repeal of the Frontier Crimes Regulation which has a tendency to make them lethargic is likely to improve the efficiency of police, given a force of sufficient strength.‡ Adverse comments have been made on this score from time to time in administration of Criminal Justice Reports and it is said that efforts have been made in recent years to impress upon the investigating staff the necessity of collecting evidence for a judicial trial and not for jirga.§ We do not think that any material improvement can be expected in this respect so long as a dual system continues.

We tried to elicit from such of the Deputy Commissioners as we examined, the standard of evidence they have in mind in jirga trials. Of course, it varies with individuals and according to the circumstances of each case. We, however, got something definite from one of them. It is this :

> " ..... A finding which is based on (evidence of) motive and on (that of) general belief in the village.....that the accused committed the offence is in my opinon a good finding which I would accept, if I had confidence in my jirga members. I know my jirga members very well."‖

The records of cases examined by us also show that most Deputy Commissioners have the same view. Where jirga members do not go to the spot, as is usual, ' general belief ' can only be deposed to by such of the village folk as are

*Messrs. Caroe, Samiuddin, Saaduddin.

†Messrs. Samiuddin, Radha Kishen, Ali Asghar and others, Ghulam Hussain, Maaz Khan, Mohammad Aslam Khan, Dost Mohammad Khan, Karim Dad Khan, Waliullah, Saaduddin, Attaullah.

‡Messrs. Caroe and Fooks.

§Messrs. Adam, Mallam.

‖Captain Hay.

present in the court compound. We have already mentioned our own view that in such cases people's belief is based on the alleged motive and has no independent value. In practice therefore it comes to charging the accused in some such manner : " There was reason for you to murder the man (in question). If you did not, who did it "? The accused is to be convicted if he fails to account for the murder by proving that another man had a stronger reason or at least had as strong reason to murder the man and that the relatives of the deceased implicated him out of enmity or that the deceased's recent misconduct, not known to them (the relatives) or to the village people, was the cause of a dishonoured husband or father or brother of a woman murdering him, or that he had encountered armed thieves or dacoits on his way home in the dead of night or that he was mistaken by another man for his own victim or the like. Assuming such possibilities exist in a given case, should he, a man put in the lock-up as soon as he had been suspected, be called upon to establish affirmatively that one or the other of these things was the cause of the murder or should the crown, with all its resources, negative the existence of each one of them ? To our mind there is only one answer, *viz.*, that the onus should rest on the Crown. The jirgas and Deputy Commissioners expect the accused to take the onus and discharge it. We think that if the police properly work up a case in which the accused had a strong motive to commit the crime, they can find evidence in many cases to establish, by a process of elimination, that no one but the accused could have done it. It must be conceded that in many other cases the suspected person would get off for want of evidence.

The fact being generally known that evidence of motive is frequently regarded as sufficient in jirga trials, devices have been invented to put the unsuspecting jirga on a wrong track. We quote the following from the same officer* who would convict on the evidence of motive and of general belief :—

> " *Q.*—Have you come across cases where enmity exists between A and B and also between A and C and C murders B with the intention of having A charged with the murder of B and saving himself ?
>
> *A.*—A defence of this kind had been raised more than once, and I have also come across actual cases of this kind."

We have ourselves found a case of this description in the course of our examination of the records.

The evidence proceeds :—

> " I admit it is dangerous to rely on the decision of a jirga if the motive is practically the only evidence."

If our view is right that ' general belief ' (which, added to the evidence of motive proves the case according to Captain Hay) is based on the known motive and has no independent value, the dangerous course of convicting on evidence of motive alone is frequently adopted.

In cases of blood-feud murders where the person whose murder is to be avenged has left several grown up sons any one of whom may have killed the murderer of his father, it is almost impossible, in the absence of other evidence, to fasten the guilt on any one of them. The relatives of the deceased implicate all of them but the jirga would convict the eldest only because he is the senior in age. We came across a case in which the Deputy Commissioner upheld the conviction on the supposition that according to tribal custom the eldest son ought to avenge the murder of his father. Query.—Is there such a custom in the tribal area and if so, does it hold good in the settled districts ?

Absconding is generally regarded as raising an inference of guilt. Even in a court of law such an inference, though weak, is permissible in certain circumstances. In this province it loses much of its value as many persons who think they may be suspected or are charged by the complainant who generally makes whole-sale accusations against his enemies, abscond to the tribal territory. The jirga members often rely on this conduct as indicative of guilt. Given certain conditions they are justified in taking that fact into consideration. It has, however, given rise to a curious device. Offenders, particularly if they are well-to-do make one or two of their innocent underlings abscond to ward off suspicion from themselves.

We have found in many cases a much larger number of persons absconding than those against whom the jirga eventually give a verdict of guilty, though if one of two persons absconds and the other stands his trial forthwith the jirga are

*Captain Hay, Joint Deputy Commissioner, Mardan.

prone to definitely finding the absconder guilty in acquitting the particular accused before them.

It is true many more guilty persons are convicted who would have got off if judicially tried. At the same time it cannot be denied that a fair percentage of innocent men find themselves in jail through jirga trials.* In view of the criterion observed by the Councils of Elders, we are not surprised to find that in some cases prisoners convicted by the jirga and the Deputy Commissioner, whose revisions were also rejected by the Commissioners were, on inquiry ordered by the Chief Commissioner on the representation of certain persons, found to be innocent and released after serving a part of the sentence. Two instances of such cases occurring in the last 8 years are mentioned by Khan Karimdad Khan, a retired Police Inspector and Honorary Magistrate. Similarly the representatives of the Mardan Bar Association refer to several cases of this kind. We have ourselves come across records of cases in which persons were released, having been found to be innocent, on the judicial trial of a co-accused who had absconded but was subsequently tried and convicted, or on inquiry directed by the Chief Commissioner. Many such cases will be found in Appendix III. By far the most pathetic case is that of a woman who was unjustly suspected of the murder of her husband and convicted. It was not till after serving three years imprisonment that the real murderer was sentenced by the Sessions Judge and her own innocence established. Full particulars will be found in the narrative of this case given in Appendix III. We have no doubt there must have been many more cases of this type but opportunities of disclosure do not often occur, nor can the class of people to which the prisoners belong have means of representation to the Chief Commissioner through influential persons.

A curious case (King Emperor *versus* Shera Din and two others) occurred in 1928, which illustrates the dangers of jirga trials. One Waris of Hissar Tang in the Peshawar District was missing. In the meantime, a headless corpse was discovered in a kiln and identified by the village people to be that of Waris. The police investigation resulted in three accused being sent up for trial. The additional District Magistrate, Mr. Dilawar Khan, made a reference to a jirga consisting of four persons, who returned a verdict of guilty. It was based on evidence given by a large number of the inhabitants of the village in which the deceased and the accused resided, as also of neighbouring villages. The " open and secret " enquiries also pointed to the accused as the murderers. Near the dead body were found a shirt, a pair of trousers and a *kullah*, which were duly identified as those of Waris. An Honorary Magistrate expressed his " belief " that one of the three accused was the murderer but the other two were innocent. Mr. Muhammad Yakub, Judicial Extra Assistant Commissioner, wrote a letter to the jirga members that the accused were guilty of the murder of Waris. *The letter was strongly relied upon by the jirga members.* The motive attributed to the accused for the murder was that they were notorious gamblers and had murdered Waris for monetary gain. Three out of the four jirga members came to the definite conclusion that the deceased was murdered by Ziarat Gul and Shera Din accused, while Mohiuddin, the third, stood by and did not take any part in the murder. (Note the circumstantial details contained in the finding.) The fourth jirga member found that Ziarat Gul alone had murdered the deceased and that the other two were innocent. After the receipt of the finding by the Additional District Magistrate but just before he could pass his orders, a telegram was received from Waris, supposed to have been murdered which announced that he was very much alive. The accused were discharged.

The Additional District Magistrate noted that he was " not prepared to hold that the accused were falsely charged by any one in deliberate way. Hence no action against any one is necessary ".

Comment is superfluous.

An extreme instance of the application of the Frontier Crimes Regulation to cases for which it was never intended is furnished by the Hathi Khel case, a narrative of which will be found in Appendix III and which has been cited by a number of witnesses examined before us. It was a case of riot and murder in which 87 persons were accused. The occurrence to which it related took place in broad day-light at Spina Tangi near Police Station Domel, on the 24th August 1930. The troops had to open fire on the crowd whose number was said to be very large. There were heavy casualties among them and about eight sepoys and Captain Ashcroft lost their lives and nine sepoys received

*Khan Sahib Karim Dad Khan ; Muhammad Safdar Khan, Sub-Judge, Bannu.

gunshot wounds. The record does not show the official estimate of the number killed and wounded. The judgment of the Deputy Commissioner only mentions "heavy casualties". Two of the accused, however said that about 80 of the crowd had been killed, and a number wounded. It is not our province to find, nor do we express any opinion as to whether firing was justified, or as to the circumstances in which Captain Ashcroft and the eight sepoys lost their lives. We are concerned only with the question whether the facts of the case made it a fit one for trial under the Frontier Crimes Regulation. There was no want of judicial proof and the case was eminently one which should have been regularly tried. For reasons which have not been stated, it was referred to a Council of Elders called from other districts. There were magisterial proceedings in the course of which no less than 47 prosecution witnesses were examined, most of whom gave direct evidence. The accused were not allowed to be represented by legal practitioners as, it was said, the inquiry was *ab initio* under the Frontier Crimes Regulation though, as will appear from a perusal of the evidence of Lieutenant Chaudhri in the case, the prosecution was conducted by the Prosecuting Inspector. The case was subsequently tried by the jirga inside the jail and resulted in the conviction of 38 of the accused. The property of some of the accused and of their relatives was confiscated and some houses were burnt, ostensibly under section 34 Frontier Crimes Regulation.

The case involved important questions of law and fact and should have been publicly tried and the accused, allowed to be defended, who were British subjects. The following remarks of the Deputy Commissioner in upholding the verdict of the jirga clearly show that a more sifting enquiry than could be made by jirga was necessary. He says :—

> "It is only reasonable to suppose that the main number managed to make good their escape and there is strong presumption for believing that a considerable number of accused in court, were unarmed people who were too frightened to attempt to escape when such heavy firing as occurred was in progress and only lay near the scene of action to avoid being shot. Presumably the advent of troops, the noise of drums and shouts from the Lashkar, etc., the general excitement prevailing attracted a large number of people to the site merely as on-lookers."....
>
> "The persons who formed the gathering were acting in contravention of lawful orders passed by the Deputy Commissioner Bannu, from time to time and therefore all such persons are members of an unlawful assembly. The facts that they had or had not reached their goal does not enter into the question for they were already acting in contravention of these lawful orders in collecting together and marching to the scene of meeting."
>
> "The number of weapons recovered from the scene of occurrence were peculiarly small. The witnesses for the prosecution have been unable to identify any of the accused as being on the scene of occurrence armed with deadly weapons. Without such evidence therefore it is not possible to bring home the offence to the great majority of the accused. The jirga however as a result of their inquiry, as can be seen from their finding, have definitely found that Ayub Khan, Mir Azam Mirdad, Mir Sahibdin, Mohammad Sher and Pir Baddan were all armed with various kinds of fire-arms ; except for these six persons, therefore the offence under section 148 Indian Penal Code as against the remainder must fall to the ground."
>
> "The evidence of the men of the 6|13th Rifles show that an assault was made upon the person of Captain Ashcroft before any shot had been fired by the military or the police. There is no evidence whatsoever on record to show that the troops opened fire, first. As regards the common intention the six persons named above, Ayub Khan, Mirdad, Mir Azam, Mir Sahibdin, Mohammad Sher and Pir Baddan intended to fulfil their intention to hold a meeting at the appointed place in direct opposition to the force of Government in the vicinity with the use of arms the resultant action of which they cannot but have been aware."

Two of the accused were sentenced to 14 years', four to 10 years' and the remaining thirty-two to 1½ years' rigorous imprisonment. It cannot be denied

that proceedings under the Frontier Crimes Regulation in such a case cannot inspire confidence.

A number of persons convicted by the jirga would also have been convicted judicially on the same evidence or on the same evidence and additional evidence which could have been collected by the police if the investigations had been more thorough.

Section III.

System examined in relation to local conditions and its defects.

Having examined and ascertained in the third Chapter the peculiar conditions of this province and also the provisions of the Frontier Crimes Regulation as regards the trial of criminal cases and as to how they work in practice, we are now in a position to see how far they are necessary in view of the conditions found by us and summarised in the concluding part of the third Chapter. We are unable to say that " the proximity of the tribal belt " which facilitates the absconding of offenders, or " the strong sentiment of jealousy and dishonour felt by the Pathans on the infidelity of women ", or the Pathan being ' virile ' and ' sensitive ' and having a tendency to commit violent crime on provocation, or false accusations and perjury which prevail to an appalling extent, or occasional murders committed with the help of hired assassins, makes *the mode of trial* of criminal cases laid down by the Frontier Crimes Regulation necessary or even desirable. The object of all rules of procedure and evidence is to find as best we can whether the prisoner in a given case is guilty or innocent. Why should a different mode of trial which is admitted to possess fewer safeguards be resorted to ? It is not because those who administer justice are less anxious in this province than elsewhere that care should be taken that the innocent may not suffer. We put to several witnesses, who favour the Frontier Crimes Regulation, as to how the peculiar conditions of this province are affected by the mode of trial laid down by the Frontier Crimes Regulation. The reply that was given, and which is the only possible reply that can be given is that " the useful purpose which the Frontier Crimes Regulation serves, in the conditions stated above. is that a large number of criminals are punished, who would go unpunished but for the Frontier Crimes Regulation..... Neither the Frontier Crimes Regulation nor any other Code can alter the character of any people. The Frontier Crimes Regulation has not had the effect of improving the people's character in that direction."*

We have ourselves held that trials under the Frontier Crimes Regulation resulted in a larger number of guilty persons being punished than would have otherwise been the case ; but it should not be overlooked that they also resulted in a number of innocent persons being convicted, only some of whom could subsequently obtain their release under certain favourable circumstances. The advantage above referred to is further counter-balanced by the following grave considerations :—

(1) The main object of the Frontier Crimes Regulation as recited in the regulations of 1887 and 1901 was to suppress crime. That it has failed to accomplish it, is admitted on all hands. The statistics of crime show that the number of murders which, it was believed, would be reduced by the Frontier Crimes Regulation, is now about three times of what it was before its enactment in 1887. Much the same is the case with other serious crimes. In the ordinary course crime of this kind has increased everywhere but not in the same proportion in which it has done here. The statistics given in the appendix show a comparison between this province and the Punjab as per 10,000 inhabitants. We have fully discussed in the third Chapter the figures of crimes from 1852 to 1929 and a study thereof will show the progress of crime. A distinguished district officer admitted before us that the increase of murder cases is partly, at any rate, attributable to sentences of imprisonment being passed, under the Frontier Crimes Regulation, in murder cases and the absence of death sentences in such cases.†

We have come across numerous cases in which sentences very much short of even 14 years, which is the maximum sentence under the Frontier Crimes Regulation, were passed on the recommendations of the Council of Elders which are entitled to be given weight to under section 18. Councils of Elders,

*Mr. Fraser, Judicial Commissioner, North-West Frontier Province.
†Mr. Caroe, Deputy Commissioner, Peshawar.

particularly in Kohat and Bannu, made recommendations for ridiculous sentences referring to certain extenuating circumstances, sometimes trifling. Sentences of fine and the award of blood-money in cases of murder were pretty frequent even after Sir John Maffey's circular of 1922 was issued. That a man was in hiding for some years or had believed in the unchastity of his wife whom he killed in cold blood or murdered a person in revenge for another murder was often considered by jirgas to be sufficient for a sentence of fine or award of blood-money.

We are strongly of opinion that unless sentences of death are passed in murder cases ending in conviction they will go on increasing at a progressive rate as they have done. Convictions in a larger number of cases ending in sentences of imprisonment are more harmful than acquittals. Fewer convictions but with sentences of death have a more deterrent effect. When tribunals pronounce people guilty of murder and sentence them to short terms of imprisonment an impression gains ground that murder can be committed with comparative impunity. On the other hand when one is acquitted, the outside world, except the murderer and a few others, only knows that a person not guilty has been acquitted. But cases of murder ending in convictions followed by death sentences cannot fail to have a most salutary effect on would-be criminals. The suggestions made by one or two witnesses that Deputy Commissioners be empowered to pass death sentences without any other modification of the present system is too callous to merit consideration. We shall hereafter examine the more proper suggestion of witnesses, like Mr. Caroe, who propose certain safeguards. What we emphasise here is that the present system precludes the possibility of death sentences being passed. Indeed Sir Frederick Cunningham and Mr. Merk protested against sentence of 14 years being passed in jirga trials.

(2) False accusations and perjury can, under the present system, be indulged in with impunity. As already mentioned, in every case the relatives of a murdered man or the complainants in other cases implicate all their enemies. In one extreme case, three sets of persons were accused and were charged in the alternative, the complainant having given three different versions on three different occasions. The police cannot assume the responsibility of rejecting the complainant's case as against certain persons and prosecute him (the complainant) for offences under Section 182 or 211, Indian Penal Code, in view of a possible jirga trial, in which any kind of evidence, is accepted. The person held by the police to be innocent may be found guilty by the jirga. The result is that the police arrest and send up almost every one accused by the complainant. The Magistrates in their turn, if they have to make a recommendation for a jirga trial do not prosecute the complainant and his witnesses lest they should prejudice the case. The evidence given before the jirga is not on oath. Now, as the law stands, no one is bound to make a true statement before a jirga. Section 193, Indian Penal Code, cannot apply to evidence given before a jirga. People have a free license to make any statement they like before jirga members and have no legal responsibility. In any view of the case no one has ever been prosecuted for making a false statement before a jirga.* It is not, therefore, a matter of surprise that false accusations and perjury prevail to the extent we find. It is simply scandalous.

(3) The detective ability of the police has little incentive in the present system and as observed elsewhere will materially improve if they know they have to work up a case to a given standard. Circumstantial evidence requires careful investigation and it is circumstantial evidence alone which can be counted on in cases of crimes where no direct evidence is available. They will have a much freer hand in prosecuting people guilty of falsely implicating innocent men. The police force may need strengthening and it is but fair that the police should not be handicapped by lack of sufficient strength.

(4) The Magistracy is too prone now to adopting short cuts in the disposal of cases. It shirks the responsibility of convicting or committing the accused to the Court of Sessions where there is evidence but is open to criticism as is the case everywhere. This feeling is bound to disappear if magistrates have to make themselves responsible for convictions or acquittals. We have little doubt that their judicial aptitude in solving difficulties and their sense of responsibility will become of a higher order. They will be in a

*Mr. Caroe, Deputy Commissioner, Peshawar, and Captain Mallam.

much better position to deal adequately with cases of false accusation and perjury.

(5) It is not possible in the jirga system that the parties should have the benefit of representation by legal practitioners. As already emphasised cross-examination, and the presentation of the case by both sides, are indispensible in the present state of advancement of this country. We shall make further remarks on the subject in commenting on the dual system which now prevails.

(6) A right of appeal on facts, unless trial is by jury, or any kind of judicial control, cannot be had in the jirga system. Convictions in cases of serious offences through purely executive action, apart from the inherent defects of the system, are highly undesirable and do not command public confidence.

(7) The trials of serious offences have to take place before jirga members the majority of whom are incompetent and a number of whom are corrupt or otherwise unscrupulous.

(8) The dual system which exists and operates in the manner mentioned is highly objectionable. The regular courts have been rendered practically nugatory except in cases where the Deputy Commissioner desires to secure capital punishment or transportation for life and thinks there is good evidence. Otherwise, there is no need of such courts which can be superseded by the Deputy Commissioner making a reference to a jirga. Moreover it is unfair to an accused person who is encouraged to spend time and money in defending himself to find that he is after all to be tried by a Council of Elders.

One of the justifications for trial under the Frontier Crimes Regulation was said to be that it would ensure the quick disposal of cases. We are not aware that delay in courts of magistrates and Sessions Judges was the subject of serious complaint. But in any case, reference to jirgas after magisterial proceedings and even sessions trials cannot make for the expeditious disposal of cases. If the system has sufficient merits to justify its retention in this province or inauguration in another and if its use on an extended scale is practicable it would be far better to have it in preference to the ordinary judicial system to avoid the anomalies which the existence of a dual system inevitably creates. We maintain that if the Deputy Commissioner is made solely responsible for the decision of a case on the police diaries and magistrates' record, as the jirga do in the majority of cases in which they make no local inquiry, the results will be appreciably better than now when he has to act on the verdict of a jirga by which he is, to a considerable extent, bound. He will feel in that case far greater responsibility than he need do under the Frontier Crimes Regulation. We do not suggest the adoption of this alternative but have mentioned it to emphasise the inferiority of the system of trial provided by the Frontier Crimes Regulation.

Systems other than the judicial system, which obtains in India and is based on English law, are not unknown to the civilized world. That the burden of proof should be on the prosecution which must exclude all hypotheses of innocence and that the accused has no onus, need not plead or lead evidence, is not a universally accepted doctrine. There are systems under which on *prima facie* proof of guilt the onus shifts on to the accused who is called upon to plead, subject himself to cross-examination and rebut the inference of guilt thus raised and if he fails to do so the verdict of guilty has to be faced by him. This is exactly the rule in civil cases under our own system and may well be extended to criminal cases. Under such a system a much larger number of convictions can be secured than is possible under our judicial system. In effect the Frontier Crimes Regulation works on that principle with the important difference that it is, administered through a tribunal like that of jirga, consisting of a large number of incompetent men, whose integrity and independence, as a class, has already been referred to; while the system we have indicated requires to be administered, and is administered, where it obtains, by qualified and trained judges. If, therefore, a larger percentage of convictions is a desideratum, the present judicial system should be replaced by another based on the principles referred to; but it cannot co-exist side by side with any other machinery which, apart from the defects of constitution and personnel, is diametrically opposed to the main system in principle. The two must clash and give rise to results which are palpably unsatisfactory, bringing the whole judicial administration into contempt and presenting a contrast which is bound to shake public confidence in

one or the other. Criticism of one based on principles derived from the other cannot be met by those responsible for both. To illustrate by a concrete instance, the advocates of the jirga system as a supplement to the principal judicial system have to admit that right of cross-examination through a legal practitioner is most valuable in ascertaining the truth* and that the right of appeal is a great check on arbitrary tendencies, that an accused person should not be cross-examined, that the onus throughout lies on the prosecution, which must exclude all possibilities of innocence, and that benefit of doubt should be given to the accused....† all of which doctrines are the creatures of the judicial system, to which they (the advocates of dual system) must pay allegiance, and are not adjustable in the system enacted by the Frontier Crimes Regulation, which they (the advocates of the dual system) would not abandon. To insist on the introduction of such doctrines into the latter system is to deprive it of its essential character and would amount to conversion thereof into a tribunal of the former variety.

Section IV.

Opinion and Suggestions.

Official opinion is somewhat divided. While it is recognised that the number of murder cases and cases of other serious offences have greatly multiplied during the time the Frontier Crimes Regulation has been in force ; that capital punishments are absolutely necessary but cannot be passed ; and that false accusations and perjury before jirgas are rampant and cannot be punished, the value of cross-examination and of the criticism of evidence thro. legal practitioners is generally recognised but no substitute is suggested. It is admitted that the personnel of the jirga members leaves much to be desired but cannot be improved. It is also admitted that public feeling is at present greatly against the system.

The only advantage of the present system which some of the official witnesses refer to is that a larger number of guilty persons is punished than is possible under the ordinary judicial system. This, in a way, is begging the question as in view of the inherent defects of the system it is not correct to assume that all those who were convicted were really guilty. As shown elsewhere there is reason to believe that a fair percentage of those found guilty by jirgas were innocent. In many instances, already mentioned by us, prisoners had to be released as the result of subsequent disclosures. They accept it as a fact that the tribal system no longer exists or is rapidly disintegrating. The system was introduced at a time when it was thought that the tribal mode of administering justice would result in reducing the number of murders and other serious offences but this hope has not materalised. The peculiar conditions which, according to these officers, justify the retention of the system of trial of criminal cases laid down by the Frontier Crimes Regulation are relevant only in so far that they lead to an increase of crime of that description. They have to concede that the absence of the death penalty, which is not considered appropriate in jirga trials except by two officers (Messrs. Adam and Captain Campbell), is one of the chief contributory causes which lead to an increased number of murders. Amendment of the Frontier Crimes Regulation, so as to empower the Deputy Commissioner to pass death sentences on findings of jirgas in murder cases without other safeguards, is positively opposed by other officers (*e.g.*, Captain Mallam). We do not think that the suggestion of death sentences being passed in the present system can be seriously entertained. As for the provision for death sentences, subject to certain safeguards, proposed by witnesses like Messrs. Caroe and Plumb we shall deal with them in detail in our recommendation.

Some of the officers have suggested that exemption of specified areas from the operation of the Frontier Crimes Regulation be made (*e.g.*, Mr. Almond, Captain Hay and Mr. Hopkinson), others have opposed it (*e.g.*, Mr. Caroe, Sardar Shah Singh, Extra Assistant Commissioner, Mardan). This suggestion has also been made by a number of non-official witnesses. Apart from invidious distinctions on which such an amendment would be based, we think there are practical difficulties in giving effect to it. Is the exemption to be made with reference to the place where an offence is committed regardless of the fact whether it is committed by a resident of the exempted area

*Mr. Fraser, Judicial Commissioner, North-West Frontier Province, and Mr. Adam, Inspector General of Police, North-West Frontier Province.

†Mr. Caroe, Deputy Commissioner, Peshawar.

or of non-exempted area ? or should it have reference to the residence of the offender wherever he may commit the offence ? In practice difficult questions would arise and would lead to conflict between the judicial system and that under the Frontier Crimes Regulation.

Some officers would allow appeal in certain cases, *e.g.*, Captain Sinclair and Khan Bahadur Quli Khan. The latter advocates an appeal to the Sessions Judge, Judicial Commissioner or a Special Commissioner. A provision for appeal from orders of conviction under the Frontier Crimes Regulation would necessitate radical amendments in other parts of it. A right of appeal on facts would necessitate the maintenance of a record of evidence and other proceedings. No appeal in which evidence is to be criticised before the appellate court, be it on the executive or the judicial side, can be pressed by a prisoner in jail except through a legal practitioner. An appeal, merely in writing, with no right of address is of little value. To give a right of representation by a legal practitioner in appeal and to deprive the accused of it in the first court is unfair to every one concerned including the jirga and the Deputy Commissioner. Points that may be urged on appeal might not have been urged by the accused himself, either before the jirga or the Deputy Commissioner, who had not in consequence applied their minds to those aspects of the case.

A suggestion has been made by a number of official witnesses that serious offences, like murders, committed in obedience to Pathan sentiments, should be allowed to be compromised in certain circumstances. The following question was put to Captain Hay, and the answer given by him is quoted below :—

> " Do you favour the suggestion that all cases of murder, committed in circumstances in which a Pathan according to the sentiment of his class is provoked to commit murder, should be sent for settlement before a jirga, in accordance with tribal custom, regardless of the question whether there is evidence for judicial trial or not ?
>
> " A.—I am inclined to be in favour of such a scheme, and would like to see it tried."

The view is more or less favoured by Messrs. Caroe, Fraser and Almond. Mr. Fooks, Senior Superintendent of Police, Peshawar, is doubtful of the soundness of this view. The increased number of murders after 1922 is attributed in part to the circular of Sir Hamilton Grant, issued in 1920, in obedience to which a larger number of murder cases were allowed to be compromised than usual. It is our considered opinion that nothing is more disastrous for the administration of justice than the composition of murder cases and serious offences. We have already commented on this aspect of the matter. As a matter of fact, lenient sentences, in view of extenuating circumstances, supposed or real, and the composition of murder cases have been allowed to a large extent in the past and are, in our opinion, largely responsible for the ever-increasing number of such cases. We are unable to reconcile the complaint against the increasing number of murder cases and other serious offences with a desire to have them leniently dealt with in deference to the Pathan sentiments. If there are extenuating circumstances in given cases, a judge is bound to take them into consideration when awarding sentence. In murder cases he can pass the lesser sentence, namely, transportation for life, if the facts warrant it. If the circumstances of a particular case require further leniency, the Sessions Judge and the Judicial Commissioner can recommend to the Local Government to extend its prerogative of mercy. The Local Government itself can reduce sentence on a petition for mercy submitted by the prisoner. The law, however, must have its course. It is only when it is brought home to the people that commission of an offence like murder has the serious consequences provided by the Indian Penal Code that any appreciable effect on crime can be expected. Once a door is opened for the jirga to recommend or the Deputy Commissioner to award, a lesser sentence than is appropriate to the crime, there will be no end to an utter absence of principle in awarding sentences.

In view of the circumstances stated above the evidence of many official witnesses though of considerable value in acquainting us with the various problems which exist, does not contain such constructive suggestions as would enable us to find a satisfactory solution of the difficulties which present themselves to our minds.

Some of the official witnesses who have had sufficient experience and possess means of knowing the methods employed by jirga members in trying criminal cases advocate the abolition of the trials by jirgas.

Mr. Saaduddin, the Additional Judicial Commissioner, has expressed himself strongly against the trial of criminal cases under the Frontier Crimes Regulation. Mr. Thompson, the Additional Judge, Peshawar, has likewise expressed an opinion against it. Sheikh Abdul Hamid, Extra Assistant Commissioner, the present Mir Munshi of the Hon'ble the Chief Commissioner, who has to examine almost all records of cases sent for on revision, is opposed to the system. Mr. Mohammad Safdar Khan, Senior Subordinate Judge, Bannu, and Malik Khuda Bakhsh. Public Prosecutor, Derajat Sub-Division, have strongly criticised it.

As regards non-official opinion it can be safely said that the intelligentsia, particularly the Bar, expresses itself in no uncertain terms. It has been suggested by some officers that members of the Bar are opposed to the trial of criminal cases by jirgas, as it affects their practice. Some have gone so far as to suggest that public opinion, which is admittedly against it, has been manufactured by the legal profession. The entire educated community in this, or for the matter of that, in any other province is absorbed mostly by the legal profession and government service. The legal practitioners, as a class, form the vocal section of the population. It is not to be wondered at that they were the first to take note of and to agitate against the defects of the jirga system. They might have taken a lead in the matter, but, we have no doubt that in doing so they were not actuated by sordid motives. In their ranks there are many for whom there is no dearth of briefs and they protest as strongly against the Frontier Crimes Regulation as the struggling juniors. It cannot be denied that they are in touch with those who are tried by jirgas, with those who have to appear as witnesses before them and with the jirga members themselves. They have occasions to know facts, from their clients and others, which are not likely to be known to others, particularly officials. Mr. Saaduddin, now the Additional Judicial Commissioner, was once a leading lawyer of Peshawar. He tells us that the prospect of a jirga trial was contemplated by his clients with alarm and dismay. We are not in these circumstances inclined to set aside the great volume of evidence coming from that source on the supposition that the legal profession have their own axe to grind. As was not expected, there are men among the legal practitioners who are not in favour of the total repeal of the Frontier Crimes Regulation. Mr. Radha Kishen Puri, M.A., LL.B., Mardan, is one of them. He would exempt certain urban areas from the operation of the Frontier Crimes Regulation ; and in case the Frontier Crimes Regulation is retained he would have jirga members elected from each Tahsil, he would allow a right of appeal from the decision of the Deputy Commissioner to the Sessions Judge. For the present system he would substitute another which he propounded in great detail in his evidence before us. We do not desire to set forth his scheme in detail or to criticise it. We may, however, mention that his view if given effect to, will mean another Frontier Crimes Regulation in place of the present one and less practicable. As regards the present Frontier Crimes Regulation his opinion is clear. He says, " The Frontier Crimes Regulation, as it stands, should not be retained. It should be radically amended in the manner indicated by me so as to give effect to the scheme which I have discussed ". Mr. Ladha Ram of Bannu is not in favour of the total repeal of the Frontier Crimes Regulation, so far as it concerns the trial of criminal cases. He is, however, very unsparing in his condemnation of the jirgas. He thinks that " at present anybody who approaches a Tahsildar and is recommended by him is made a jirga member. No serious consideration is paid to his antecedents and qualifications.....Whenever a jirga visits a spot the police always accompany it. The police are also said to have taken care that the jirga was not approached by the parties as it was rumoured that the jirgas were approached by the parties ". He would limit Section 11 to cases of murder, robbery and dacoity. " The educated classes look upon the Frontier Crimes Regulation with disfavour but the Khans and Raises, to maintain their supremacy would retain the Frontier Crimes Regulation in some form or other. The common uneducated masses like some of the provisions of the Frontier Crimes Regulation such as Section 8, which gives them an easy way to get Sharmana for the abduction, or elopement of their women folk ; and Section 11 which affords them a relief

by seeking retribution upon their suspected enemy ; and Section 30 which punishes a run-way wife ".

" There is a general dissatisfaction with the administration and working of the regulation specially due to the indiscriminate preparation of the list of jirga members and very wide and unchecked powers given to such members.....

" Personally I think that society has outgrown the Frontier Crimes Regulation of 1901. But as given in answer to question No. 1 the circumstances prevailing here necessitate that some special law in Criminal matters may be made suited to the advanced stage of civilization, to exercise a wholesome checks on the turbulent section of society.....

" A typical case of a trial under the Frontier Crimes Regulation is the Domel Congress movement case (the Hathi Khel case) in which quite a large number of persons were punished on suspicion of being members of an unlawful assembly. The prevailing sentiment of the people here is that the authorities used this course for the purpose of wreaking vengeance for the killed and wounded on the side of the Government and for the purpose of hedging off the acts of high handedness and aggressiveness committed by the police and the military which could not have the light of the day if the case had been conducted in the ordinary Courts of justice.

" Another case which came to my notice long ago was a case under Section 458, Indian Penal Code, in which one of the accused was caught red handed on the spot and a few of his accomplices succeeded in making good their escape. The man arrested on the spot was tried by a Magistrate 1st Class and the accomplices arrested on suspicion were tried by jirga. It would be amusing to notice that the man caught red handed got a less amount of punishment than his accomplices who were arrested on suspicion."*

Mr. Charanjit Lal, Pleader, Peshawar, is not in favour of the total repeal of the Frontier Crimes Regulation. He tells us " that most of the jirga members, as we now have, are unsatisfactory. There are illiterate persons among them.....They can be influenced by illegal gratification or recommendation ". He thinks that " the retention of the Frontier Crimes Regulation in its present condition is dangerous as no one can feel safe from the capricious system or the jurisdiction exercised under it by some officers concerned ". The changes that he would introduce are—

(1) all *bona fide* residents of the urban areas in the settled districts and all inhabitants of Hazara and Dera Ismail Khan Districts should be exempted,

(2) he would confine section 11 to cases

" (*a*) when the dispute is between a tribesman temporarily under the jurisdiction of the Political Agent and

(*b*) when an offence is committed against a very poor man not very popular in the village but some person or other on account of the influence of wealth or religion is able to keep away all possible evidence ".

It is difficult to determine in practice the second class of cases. He also advocates the elective method for preparing the list of jirga members. He would allow an appeal from an order of reference to the Council of Elders and from an order of conviction on the verdict of the Council of Elders. We have already given our reasons against suggestions of the kind mentioned by him being given effect to.

As regards the non-official opinion from quarters other than the Bar we should mention that a large number of those who have sent in replies to the questionnaire urging the retention of the Frontier Crimes Regulation are jirga members including a large number of military officers. (The fact that a particular person is a jirga member was verified by us from the list of jirga members on the record). It is somewhat natural that this class of person would be in favour of trial by jirgas, partly because they do not realise the defects of the system and partly because they have been subjected to some severe criticism by other non-official witnesses. Many of them have admitted that they have not read the Frontier Crimes Regulation. Many of them are not sufficiently literate to acquaint themselves with its contents. We have referred at appropriate places to the statements of men of education who are also jirga

*Mr. Ladha Ram, Pleader, Bannu.

members. They are in a much better position to form an opinion as regards the defects of the system and do not entertain a good opinion about the average jirga member.

Non-official testimony outside the military officers and the jirga members above referred to is positively against the trial of criminal cases by jirgas. We have received a number of resolutions passed in public meetings. There has been agitation in the press and on the platform. A number of 'mahzarnama' purporting to have been signed by about 59 thousand persons have also been received. We must, however, say that there is no guarantee that the signatures and thumb impressions which appear on them are really those of the persons whose signatures or thumb marks they purport to be.

As regards the resolutions the same remark does not apply. They appeared in the Press and have, to the best of our knowledge, not been repudiated by any one.

A Sub-Committee formed by us paid surprise visits to certain rural areas. They met a large number of persons individually and collectively and found that the Frontier Crimes Regulation was not popular with the inhabitants of such areas.

That the Frontier Crimes Regulation has been unpopular is recognised in Sir John Maffey's circular of 1922. As far back as 1922 Mr. Adam, the present Inspector General of Police and then Superintendent of Police, Peshawar, is quoted in the Police Administration Report of that year to the following effect :—

> "Tribal organisation amongst Pathans has become more a memory than a living fact.....and the people show a tendency to prefer the ordinary law courts to trial by jirga".

We were greatly impressed by the following statement made by Mr. Karimdad Khan Sadozai, retired Inspector of Police, now honorary magistrate, Municipal Commissioner and jirga member :—

> "During the political agitation of 1930 I co-operated with the police on every critical occasion. I pulled down the national flag hoisted by the Congress office at Bannu. I used to acquaint the Deputy Commissioner of what took place at political gatherings. I helped the police in investigating bomb cases.....We have been loyal to the Government for several generations and are determined to remain so in future. But when I find that the interest of the Government and of the people demand a certain action being taken I should be wanting in my loyalty if I refrained from intimating to the Government of the dangers arising from a particular state of affairs. I consider it my duty to impress upon the Government the necessity of the Frontier Crimes Regulation being repealed so that the hands of loyalists be strengthened and the political agitators may be deprived of a ground of agitation against the Government. I have recently received from the Chief Commissioner a 'Sanad' in token of my good political services".

It is also the general impression that provincial autonomy will be wholly inconsistent with the powers of the Deputy Commissioner under the Frontier Crimes Regulation and will at times be seriously handicapped by the existence of such powers.

Section V.

Recommendations.

We cannot touch the judicial system or advocate its working based on departures from its well accepted principles. Besides a recommendation of that kind being outside the terms of reference to this committee, it would be recommending revolutionary changes, which public opinion, accustomed as it is to certain methods, would not tolerate. On the other hand, we are convinced that the jirgas, such as we can have, are wholly unfitted for the responsibilities which they are called upon to discharge, sitting apart from the Deputy Commissioner who is to give effect to their verdict ; and that the essential safeguards, like the right of cross-examination and address through counsel, cannot be fitted into the present system. Nor is it possible to pass sentence of death or imprisonment exceeding fourteen years. At the same time, we think

the procedure of trial of criminal cases, laid down in the Frontier Crimes Regulation, is one for trial by jury in a crude form. The jirga being only a jury returning a verdict after hearing evidence, the Deputy Commissioner (who corresponds to the judge) being able to convict or acquit according to the verdict or refer the case to another jirga (which is tantamount to the first jury being discharged and second empanelled) the Deputy Commissioner's decision being final, except on questions of procedure or of law, all are well-known features of trials by jury. If the judge and jury (Deputy Commissioner and jirga) unite to hear the case instead of sitting apart, as now, and parties be allowed to examine and cross-examine witnesses and address the tribunal through counsel, it will not be distinguishable from a trial by jury. This slight modification of the present system will remove all possible objections to the present mode of trial. Legal practitioners and the proceedings will be controlled by the judge sitting with the jirga or jury, witnesses can be cross-examined under the guidance of the judge, and the jirga can be addressed by both sides. It will be finally charged by the judge. If the verdict is perverse, the judge may not accept it and may submit the record to a higher court. Any sentence, including one of death, can be passed. No appeal will lie, except on a question of law or the amount of sentence.

Mr. Caroe, I.C.S., (Deputy Commissioner, Peshawar) who attributes the the present state of crime, in part, at any rate, to death sentences not being passed in murder cases, said in his reply to the questionnaire, "I have often considered the possibility of turning the jirga into a form of jury which would be charged by the Magistrate, allowing the infliction of a capital sentence in the event of a verdict of guilty". In his *vive voce* examination and in answer to our questions, he elaborated his views thus :—

"On its own merits there is a good deal to be said for the system of jirga members acting as jurors with a Magistrate instead of working independently of him, as now.

"I would modify the jury system contemplated by Criminal Procedure Code in some respects. I am not in a position to express any opinion as to whether it would be desirable to allow the accused to be represented by a legal practitioner in a case tried by the Magistrate and jirga as jurors. As a good deal can be said on both the sides, I would reserve my opinion on that question.

"It should be equally feasible for the Sessions Judge to try cases, exclusively triable by the Court of Session, with a jirga sitting as jurors. Of course, a certain amount of legislation will be necessary to let in evidence which is not admissible now.

"The provisions of the Criminal Procedure Code relating to the jury cases will have to be amended to suit the peculiar conditions arising out of trial by a judge and jirga as jurors.

"As regards the right of the accused to be represented by a legal practitioner before a judge and jirga, my view is the same as expressed in relation to the trial of cases by Magistrate and jirga.

"It is possible to make provisions to allow a legal practitioner to appear for the accused before the jirga trying him, and also for the Crown".

Mr. Plumb, I.P., Personal Assistant to the Inspector-General of Police, is inclined to favour trial by jury. Mr. Fooks, Senior Superintendent of Police, Peshawar, said that it was the best constructive suggestion that he had heard.

Mr. Abdul Hamid, E. A. C., now Mir Munshi to the Chief Commissioner, whose reply to the questionnaire and answers in the *viva voce* examination are characterised by ability and deep thought, also recommended jury trial.

Captain Hay did not commit himself to any definite view, as he had not applied his mind to that matter till he made his statement before us ; but offhand he was against a jury trial in the manner suggested.

Mr. Adam, Inspector-General of Police, is against it.

Mr. Thompson, I.C.S., Additional Sessions Judge, who is against trial by jirgas, is also against trials by jury.

Such of the witnesses, official and non-official, who are opposed to trials through jirgas according to the present system and who were questioned on

the subject, favoured trial with the aid of a jirga as a jury according to the Criminal Procedure Code.

If such a system be decided upon, it should be limited to a class of cases which should not be otherwise triable. There should be no duality. We are of opinion that cases of murder, culpable homicide, attempt to commit murder, abduction, kidnapping, dacoity and causing the disappearance of evidence, under sections 302, 304, 307, 308, 363 to 370, 391, 396, 398 and 201, Indian Penal Code, should be within the rule. Under the Criminal Procedure Code they are all triable by a Court of Session. Cases falling under sections 363, 365, 368 and 369 may also be tried by a Magistrate, if the act punishable as an offence is not serious and is such that the punishment which the Magistrate can award is not inadequate. The magistrate will decide, in each case, whether he should try it himself or commit it to the Court of Session. Offences under these sections, if committed to the Court of Session, should be tried by jury.

We are unable to accede to the suggestion that the rules of evidence, contained in the Indian Evidence Act, be made inapplicable to trials by jury. We have not been referred to any particular provision of that Act which is considered to create difficulties or would unduly handicap the jury. We have ourselves examined the whole Act, and are unable to find any positive rule which excludes evidence of value. All that is probably desired is that ' hearsay ', ' repute ' or evidence based on ' belief ' (which is itself based either on ' hearsay ' or ' repute '), may be admitted. We have explained elsewhere that, carefully analysed, this class of evidence is, apart from technical considerations, quite valueless. If it is traced to a good source, it ceased to have a value of its own, the source, *i.e.*, the person who can give direct evidence, displaces ' hearsay ' or ' repute '. If it is not so traced, it will always be found to derive its origin from the other evidence in the case, *e.g.*, the accused having some motive to commit the offence, or having been suspected for some reason or having absconded. On grounds such as these, the law of evidence excludes this class of medium of proof. As observed at another place, the rules of evidence are based on sound sense and human experience, and any prudent man who is to act without the aid of the law of evidence would, in a large majority of cases, exclude all evidence which is excluded by the Indian Evidence Act. He would characterise it as valueless. In the language of the Law of Evidence, it is " inadmissible ".

To admit this class of evidence will be to open a flood-gate for all sorts of rumours and all manner of idle gossip. The judge and the jury will be overwhelmed with a jumble of conflicting tales, and their record will be a mass of confusion.

The police will be greatly embarrassed in collecting evidence and placing it before the court. False accusations and calumnies will be let loose to an extent which will be beyond control and human endurance.

The only other kind of evidence which does not, in principle, differ from the foregoing is compurgation. It is too archaic to find a place in any system of administration of justice in the present age.

In our view, there is no other solution of the difficulties which exist and which we have endeavoured to point out. Unless jirgas be associated as jurors, sentences of death, which are called for in murder cases, are unthinkable on their verdict. Besides, the choice lies between depriving the accused of the various safeguards, such as representation by a legal practitioner (and, therefore, of the right of cross-examination of witnesses and of address on the facts of the case) and of the right of appeal on the one hand and dispensing with the jirga altogether on the other. As already stated, these elementary rights are of the essence of the administration of justice in serious cases in which sentences of long terms of imprisonment can be passed, but cannot be adjusted in the present system of jirga trial.

We are not prepared to accept the suggestion that an officer of the rank of a Magistrate should sit with the jirga to form a tribunal and pass sentences of death ; nor do we think that the Deputy Commissioner and jirga, sitting together so as to form the judge and jury, is practicable in view of the ordinary functions of the Deputy Commissioner. It is impossible for him to find time for this class of work. Moreover, it will be a retrograde step. On principle the executive head of the district should not possess judicial functions so as to supersede the judge. Unless a dual system is retained, to which we have seriously objected, and if the Deputy Commissioner and Jirga sit as judge and jury, the Sessions Judge will cease to function in the class

of cases to which the jury trial should extend, and they form the bulk of cases triable by the Sessions Judge. In this view, the only feasible course is that the jirga should sit with the Sessions Judge and not with the Deputy Commissioner or a Magistrate. We put this aspect of the question to Mr. Caroe, who sees no practical difficulty in the Sessions Judge doing so. An officer of the position of a Sessions Judge cannot be less trusted than the Deputy Commissioner in trials with the aid of jirgas.

This greatly simplifies matters, and the position works out very satisfactorily. We need have no special law for trial of this class of cases, (unless it is necessary to exclude the Indian Evidence Act), and the procedure laid down in the Criminal Procedure Code is applicable in all particulars. What is now the list of jirga members will, after a little scrutiny, be the list of jurors. It will be prepared by the Deputy Commissioner and the Sessions Judge (section 321, Criminal Procedure Code.). We have carefuly considered every section of the Criminal Procedure Code and found nothing which may be inapplicable to the conditions of this province. If sections 11 to 20 of the Frontier Crimes Regulation be withdrawn, no particular law need be enacted to give effect to this suggestion. A notification by the Local Government under section 269, Criminal Procedure Code, will be enough.

Except some jirga members, the whole non-official testimony, even of those who do not desire total repeal of the Frontier Crimes Regulation, speaks in disparaging terms of the ability and character of the jirga members in relation to the functions which they now perform ; but we think most of those objections will disappear when they sit with the judge, who will guide them and control the bar and the witnesses on either side.

Many official witnesses who are, or were in the past, District Officers, though not satisfied with the jirga members, think they can appreciate and weigh evidence and are not influenced by extraneous considerations in deciding cases. If this is even an approximately correct estimate of their competency, they ought to do good work as jurors. In other provinces, the jury system is being cautiously extended, because it is believed the jurors have a tendency to acquit. But the jirga members have shown no such tendency. Their record of the last 45 years and the training they have had afford every reason to think they will have no hesitation in returning a verdict of guilty when the evidence conveys conviction to their minds. There will be nothing to prevent them from convicting on evidence which the Magistrates in this province generally consider to be inadequate or faulty. Their verdict, even on such evidence, cannot be set aside.

They are well acquainted with the manners and customs of people like themselves, and ought to be able to appreciate alleged motives for crimes and, in particular cases, the relation between Pathan sentiments and certain forms of crime. If, therefore, official opinion concerning jirga members be accepted, the Local Government should have no hesitation in instituting the jury system, as suggested by us, which will also remedy all existing defects and meet all criticisms. If, however, our suggestion is not acceptable, the only alternative which we can recommend is reversion to the ordinary judicial system in all cases.

CHAPTER VII.

Section 21.—Section 21, Frontier Crimes Regulation, runs as follows :—

> " In the event of any frontier tribe, or of any section or members of such tribe, acting in a hostile or unfriendly manner towards the British Government, or towards persons residing within British India, the Deputy Commissioner may, with the previous sanction of the Commissioner, by order in writing direct—
>
> (*a*) the seizure, wherever they may be found, of all or any of the members of such tribe and of all or any property belonging to them or any of them,
>
> (*b*) the detention in safe custody of any person or property so seized ; and
>
> (*c*) the confiscation of any such property ; and may, with the like sanction, by public proclamation ;
>
> (*d*) debar all or any members of the tribe from all access into British India ; and
>
> (*e*) prohibit all or any persons within the limits of British India from all intercourse or communication of any kind whatsoever, or of any specified kind or kinds, with such tribe or any section or members thereof."

The expression " frontier tribe ", occurring in this section, doubtless means a transborder tribe. Clauses (*d*) and (*e*) clearly indicate, if the expression itself admits of any doubt, that it was not intended to include British Indian subjects residing in the British territory. The marginal note of the section " Blockade of hostile or unfriendly tribe " is also indicative of the same fact. We have carefully considered the language of the section and are of opinion that if the expression " frontier tribe " be construed as above, no exception can be taken to the provisions contained therein. As against hostile aliens powers conferred by this section on the Deputy Commissioner are necessary. But as, in the absence of any clear definition of the words " frontier tribe ", the section is apt to be mis-applied to *bona fide* inhabitants of the British territory, who are in no sense aliens, we propose that an explanation be added to section 21 to the following effect :—

> " *Explanation.*—Frontier tribe, as used in this section, does not include British Indian subjects, though they may by origin belong to a tribe residing across the border."

We think that the section was intended to enable the Deputy Commissioner to deal with transborder tribesmen living under tribal customs who may adopt a hostile attitude towards the British administration and who are not amenable to the laws of the British territory. There can be no reason for action of the kind contemplated by section 21 being taken against those living in the British territory and having a stake therein. They can be proceeded against under the laws applicable to the British Indian subjects living in settled districts, in case they are found to be guilty of any offence or their conduct is otherwise in defiance of those laws.

We have considered it necessary to lay stress on the necessity of defining the words " frontier tribe ", because we find in practice that the section has been applied to British Indian subjects contrary to the real intention underlying it. A narrative of the well known Hathi Khel case, which occurred in Bannu in 1930, will be found in Appendix III, which illustrates the length to which the section can be carried. It appears that in Thana Domel a number of villages are inhabited by people of the Hathi Khel tribe. They have been living in British territory for generations, and own or occupy land in that part of the country. The population across the border on that side of the Frontier is also Hathi Khel. There may be some Hathi Khel residents of the British territory who have also interests across the border. The persons who were proceeded against in the proceedings are residents of villages in Thana Domel ; and either the significance of the words " frontier tribe " was lost sight of or the expression was so construed as to apply to persons having a tribal name, regardless of the fact that they are British Indian subjects and own no allegiance to the tribal system across the border. Their property was confiscated, and they were themselves arrested

and put in the lock-up for several weeks before their trial. What is more objectionable is that the property belonging to the relatives of the offenders was confiscated and houses belonging to some of them were burnt ; there does not appear to be any warrant for such a procedure in the Frontier Crimes Regulation or in any other enactment. Therefore, to avoid a repetition of mis-application of section 21, we are of opinion that the words " frontier tribe " should be clearly explained to the effect noted above by adding an explanation.

An institution known as the " Political Havalat " came into existence as a bye-product of section 21. Its genesis appears to be the conception that an ordinary havalat is meant for under-trial prisoners who are prosecuted under the ordinary law of the land. Such prisoners and the havalat meant for them are subject to the rules and regulations in force in British territory. In so far as section 21 confers very wide powers of seizure and detention of hostile tribesmen, the havalat like themselves was supposed to be outside the aforesaid rules and regulations or any kind of restriction.

A practice grew up long ago and existed, at any rate, till 1925, which was absolutely indefensible. Not only the Deputy Commissioner, who alone is empowered to act under section 21, but every officer exercising magisterial jurisdiction, and even a Police officer, considered himself empowered to put anyone whose conduct was disapproved in the " Political Havalat ". There is abundant evidence before us that people who were not tribesmen but residents of British territory, were confined in the political havalat for alleged misdemeanours for a certain length of time, after which they were released.* Some official witnesses say that political havalats do not now exist.† They were discontinued under orders of the local Government contained in Memorandum no. 9081-91-P., dated 14th October 1925, in which it was stated that—

> " The Chief Commissioner finds that certain officers are still under the impression that they have the power to confine persons in what is vaguely known as the political havalat without reference to any provision of law. There is no legal authority for such action and the Chief Commissioner accordingly directs that no persons are to be confined in the political havalat except under the provisions of section 21, Frontier Crimes Regulation."

Even after the above direction cases occurred in which people were put in the political havalat. Some such cases will be found mentioned in two extracts in Appendix III.

We do not think that any further amendment of section 21 will be necessary to prevent the possibility of British subjects being unlawfully detained if a clear definition of the words " frontier tribe " be given as we suggest, and no justification will be left for extending Section 21 to cases falling outside its scope.

Sections 22 and 23.—These two sections are inter-connected, and run as follows :—

> " 22. Where, from the circumstances of any case, there appears to be good reason to believe that the inhabitants of any village, or part of a village, or any of them, have—
>
> (*a*) connived at, or in any way abetted, the commission of an offence ; or
>
> (*b*) failed to render all assistance in their power to discover the offenders or to effect their arrest ; or
>
> (*c*) connived at the escape of, or harboured, any offender or person suspected of having taken part in the commission of an offence ; or
>
> (*d*) combined to suppress material evidence of the commission of an offence ;
>
> the Deputy Commissioner may, with the previous sanction of the Commissioner, impose a fine on the inhabitants of such village or part of a village, or any of them as a whole,"

*Mr. Saaduddin, Additional Judicial Commissioner, Messrs. Kari, Dad Khan, Khushal Khan, Representatives of Bar Associations, Peshawar and Mardan, Messrs. Ladha Ram, Malik Khuda Bakhsh, P. P., Abdur Rahim, Bar.-at-Law, Shaikh Abdul Hamid, Attaullah Khan, Chiranjit Lal, Representatives of Bar Association, Bannu.

†Messrs. Fooks and Griffith and others.

"23. Where, within the area occupied by a village community or part of a village community, a person is dangerously or fatally wounded by an unlawful act, or the body is found of a person believed to have been unlawfully killed, the members of the village community or part thereof shall be deemed to have committed an offence under section 22, unless the headmen of the village community or part thereof can show that the members thereof—

(*a*) had not an opportunity of preventing the offence or arresting the offender ; or

(*b*) have used all reasonable means to bring the offender to justice."

Section 22, besides being open to other objections, is not happily worded. It may be construed as implying that the whole village, or part thereof, may be fined, if any of its inhabitants is found guilty of one or other of the acts specified in clauses (*a*) to (*d*). A more liberal construction is that—

"Where inhabitants of any village, or part of any village or any of them, have been guilty of certain acts, the Deputy Commissioner may ..... impose a fine on the inhabitants of such village or part of the village or any of them, as the case may be."

that is, where guilt is brought home to the whole village, the whole village may be fined ; where it has been brought home to part of a village, such part of it may be fined ; and where it has been brought home to any particular inhabitant, such particular inhabitant may be fined. Some difficulty is, however, created in putting that construction upon the section by the words "as a whole" occurring in the end, which import collective liability in case of an offence of the kind described in the section being committed either by the whole village, or part thereof, or by any inhabitant thereof.

It is impossible to conceive of a case in which the village as a whole can be established to be guilty. It includes women, children, invalids and old men, incapable of committing offences of the kind enumerated in the section. It is impossible to avoid the conclusion that, where action is taken under section 22 and the village as a whole or hamlet or any other part thereof is collectively fined, at least 50 per cent. of the population is innocent but is punished. A rule of the kind enacted in section 22 might have some justification in the tribal system, in which the corporate existence of a tribe having collective rights and obligations is recognised. The tribe as a whole is entitled to control the actions of individuals, who in their turn are responsible for what may be attributable to the tribe itself. But where the village is a unit, each individual therein having defined rights and obligations, it can have no possible application. The offences referred to in clauses (*a*) to (*d*) are all such as are punishable under the Indian Penal Code. They can be committed by specified individuals, without the co-operation of others, in the village. It is, in our opinion, wholly inappropriate to the present stage of society in rural areas of this province. Cases in which section 22 was enforced in the past were not many ; but whenever it was applied, care was taken to exempt widows and orphans. Even so, a large number of other innocent persons were fined. Mr. Attaullah, Pleader, Dera Ismail Khan, tells us that the village in which his ancestral home lies was fined and a certain amount was determined to be his quota. He did not pay and the lambardar had to pay for him.

Section 23 merely contains a rule of evidence. It is so drastic that much argument is not necessary to establish its unsoundness. If a person is dangerously or fatally wounded within the area occupied by a village community, or if the dead body is found of "a person believed to have been unlawfully killed", the entire village community is to be deemed "to have committed an offence" under section 22—The question arises which of the several, offences, enumerated in section 22, should the village community be deemed to have committed on the happening of any of the events mentioned. It must be (*a*) connivance or abetment of murder ; or (*b*) failure to render assistance for the discovery or arrest of offenders ; or (*c*) persons suspected to have taken part in the commission of the offence ; or (*d*) suppressing material evidence of the commission of the offence referred to in section 23 (*b*). Such a rule has little reason behind it and need not have been enacted, as the preceding section (22) already gives unfettered and unlimited discretion to the Deputy Commissioner in imposing the fine on the village.

In substance, section 22 justifies the imposition of a fine on the whole village by the executive action of the Deputy Commissioner. It is considered by some witnesses as affording protection to Hindu inhabitants of the rural area. It is pointed out that in many villages populated by Muhammadans, there is a sprinkling of Hindu population, with one or two Hindu houses in each village. It is said that, unless the whole village is made responsible for the protection of the Hindus in such areas, they will be in great danger. So far as we have been able to ascertain, section 22, which was certainly not framed with such an object in view, has been seldom applied only because untoward results happened to any Hindu inhabitant of the rural area. The fact that a solitary Hindu house is to be found in a village inhabited by Muhammadans itself indicates a sense of security in the minds of Hindus occupying such a house. If there had been a sense of insecurity probably no Hindu would have been found in the rural areas where they carry on small business with the Muslim population around them. We have in evidence that, in certain cases Muhammadans did all they could to protect the lives and property of their Hindu neighbours when raids were committed. Some of them even lost their own lives in protecting the Hindus.* It is true that 7 or 8 years ago many dacoities were committed in Hindu houses in certain parts of the Frontier by trans-border people. The suggestion is that such dacoities were committed in complicity with some of the Muslim inhabitants of the locality in which the raids were committed. That may be true. But it is not, in our opinion, a sufficient justification for the whole village being fined. In other parts of the country a solitary Muslim house in a village wholly populated by Hindus is not an uncommon spectacle. Villages of this description are numerous in the United Provinces and possibly in the Punjab. We have been told that one of the rules which form the Pathan Code of Honour is to go out on ' chigha ' when an alarm is raised, regardless of the question whether the person who stands in need of succour is a Muhammadan or a Hindu. It all depends upon the kind of relations which subsist between the Hindus and the Muslim population. If the communal feeling is cordial, there is little danger of the Muslims refusing to extend help and support to their Hindu neighbours. Where communal tension exists the case may be different. The conditions as they obtain in rural areas in this province have so far given little indication of any communal tension. As a matter of fact, there can be no communal tension between the Hindus and the Muhammadans in a village in which no more than one or two houses of Hindus exist. The situation in which the Hindu inhabitants of such villages find themselves will be too precarious if they incur the enmity of overwhelming odds. Neither Section 22 nor any more drastic provision of law will enable them to hold their own. They have, in such circumstances, to cultivate and maintain harmonious relations with the rest of the village. If section 22 is otherwise open to objection, as we think it is, there is hardly any justification for retaining it on communal grounds.

Sections 22 and 23 purport to be penal provisions enforceable in a judicial manner. They provide for the punishment of persons expressly or impliedly found to be guilty of specified offences. Convictions and sentences for specific offences should be based on evidence connecting every one to be punished with the crime for which the punishment is meted out. Unless the section is so administered as to punish only those against whom a case has been made out by evidence, it is, as we have said, indefensible. To amend it in a manner which ensures its administration as aforesaid, will deprive it of all distinctive character and it will become a repetition of certain provisions contained in the Indian Penal Code. This is, of course, apart from the summary procedure laid down in section 22, which enables the Deputy Commissioner to impose a fine, not limited as regards the amount. Offences referred to in section 22 are sufficiently serious to make summary exercise of the power to punish undesirable. Any collective liability, such as is contemplated by section 22, can be more appropriately the subject of a provision which requires no judicial determination but can be enforced by executive action. In section 15 of the Police Act (Act V of 1861), we have a provision which provides for the punishment of the whole village by the employment of punitive police. To indicate the similarity of conditions contemplated by section 22, Frontier Crimes Regulation, and section 15, Police Act, we quote below a part of the latter :—

" (1) It shall be lawful for the Local Government, by proclamation to be notified in the official Gazette, and, in such other manner as the

*Messrs. Fooks and Chiranjit Lal.

> Local Government shall direct, to declare that any area subject to its authority having been found to be in a disturbed or dangerous state, or that, from the conduct of the inhabitants of such area, or of any class or section of them, it is expedient to increase the number of police."

It is noticeable that the Deputy Commissioner can exercise his powers under section 22, Frontier Crimes Regulation, only with the previous sanction of the Commissioner (which means the Chief Commissioner). The action to be taken under section 15 is also to be taken by the Chief Commissioner in this province. Section 15, Police Act, can be put in action if a village is " in a disturbed or dangerous state ", or " from the conduct of its inhabitants " the Chief Commissioner considers it expedient to resort to it. For instance, if the conduct of Muhammadans inhabiting a village is found to be oppressive towards its Hindu inhabitants, we see no reason why action under section 15 of the Police Act cannot be taken. It must be said that delay is likely to occur in persuading the Chief Commissioner to take action under section 15 ; but there is hardly any difference, in this respect, if the Deputy Commissioner must obtain his sanction before action is taken under section 22. It ought not to be difficult to avoid delay in cases of urgency.

It may also be said that in case action is taken under section 22 and a village, or part thereof, is fined as a whole, the Hindu inhabitants, who might have been victimised, can be compensated out of the fine realised. This is possible. No instance has so far occurred in which a fine imposed under section 22 was made payable to any particular inhabitant of the village. We think that this is not a sufficient justification for retaining section 22, if the same purpose can be otherwise served by action under section 15, Police Act. We have no doubt that the Local Government will make use of its powers under the latter section for the protection of those who need it.

In these circumstances, we think that sections 22 and 23 are uncalled for.

Sections 24 to 28.—They deal with the enforcement of the penalty provided for by section 22. Section 24 justifies recovery of fines, as if they were arrears of land revenue due by the members of the community. It is well known that the liability to pay Government land revenue is joint and several, so that there is nothing to prevent the whole fine being recovered from one individual, who may obtain contribution from others.

Section 25 imposes an additional liability of forfeiture of remission of revenue. This is over and above the fine to be imposed under section 22.

Section 26 enacts the additional liability of forfeiture of public emoluments, such as assignment or remission of land revenue, or allowances payable out of public funds, in case a person is found guilty of a serious offence or of having suppressed material evidence of the commission of an offence, or has failed to render loyal and proper assistance in the investigation of any criminal case. The result is that a person enjoying such emoluments is liable to greater punishment than another who does not enjoy such emoluments, though the nature of the offence in either case is exactly the same. Punishment for an act must vary with the act itself. Remission of revenue and allowances out of public funds are subject to conditions attached to the grant in respect thereof. Forfeiture or resumption must depend upon those conditions. As regards criminal liability, which is wholly a collateral matter, there should be no distinction between one man and another. The Indian Penal Code makes provisions for the confiscation of the offender's property in certain cases (*e.g.*, sections 126 and 127). Anyone who is convicted of such offences renders himself liable to forfeiture of his property, whatever it is, whether it consists of moveable or immoveable property, or property in the shape of emoluments referred to in section 26 ; but to place a person in receipt of such emoluments on a different footing in case be commits a serious offence, which has been explained in section 26 to mean as offence, punishable with transportation or imprisonment for a term which may extend to three years or more, is unreasonable.

Sections 27 and 28.—These make provisions incidental to those contained in sections 25 and 26 and need no comment.

Section 29.—Section 29 makes preparation to commit an offence, in certain circumstances, punishable and runs as follows :—

> *Preparation to commit certain offence.*—" Where a person is found carrying arms in such manner or in such circumstances as to afford just grounds of suspicion that the arms are being carried by him with intent to use them for an unlawful purpose, and that person has taken precautions to elude observation or evade arrest, or is found after sunset and before sunrise within the limits of any Military Camp or Cantonment or of any Municipality he shall be punishable with imprisonment for a term which may extend to 5 years, or with fine or with both, and the arms carried by him may be confiscated "

As the section stands it may be construed to imply that any person carrying arms within the limits of any military camp or cantonment or any municipality after sunset and before sunrise is liable to be punished thereunder. This is too stringent a provision and may lead to hardship. It is only when a preparation to commit an offence is inferrable from the circumstances in which arms are carried, that the section should apply. Again, the section as it stands provides for punishment if " the circumstances afford just ground of suspicion ". It should apply only if a person is found carrying arms in circumstances from which intent to commit an offence can be inferred. Law makes an act, and an attempt to commit an act amounting to an offence, punishable. Section 29 enacts an exception to this general rule and makes even a preparation to commit an offence punishable. This is the farthest limit to which a mere intent to commit an offence should be punishable. Unless, therefore, the circumstances clearly amount to a preparation to commit an offence section 29 should not apply.

In our opinion the section ought to run thus—

> " Where a person is found carrying arms after sunset and before sunrise in any Military Camp or Cantonment or Municipality in such circumstances as to afford grounds for believing that the arms are being carried by him with intent to commit a cognizable offence he shall be punishable with imprisonment for a term which may extend to 5 years or with fine or with both and the arms carried by him may be confiscated."

Section 30.—We do not approve of the policy underlying section 30, but the weight of Muslim opinion in favour of its retention is so great that we are not disposed to give effect to our own views. Most Pathan witnesses who have expresed an opinion on this question consider it to be necessary having regard to the sentiment of the people and local conditions. We are, however, of opinion that it should be restricted to Muslims among whom dissolution of marriage is permissible and that a clear provision should be made that the conviction and sentence, if the case results in conviction, should not take effect unless and until the husband prosecuting his wife for adultery divorces her. Cases in which a husband chooses to prosecute his wife for the offence of adultery are very rare. We cannot imagine that conjugal relations can be resumed by the parties after the wife has undergone the sentence. Unless, therefore the matrimonial tie comes to an end the woman will be compelled to lead a miserable life, often giving rise to incidents for which she may be either murdered or prosecuted a second or third time. If the relations between husband and wife are so bitter as to drive the former to launch a prosecution against the latter for infidelity and the differences are not made up till the bitter end, it is highly undesirable that they should continue to be husband and wife. We therefore propose that a proviso should be added to section 30 as follows :—

> " Provided that on the conviction of such woman the sentence passed on her shall not take effect until the husband divorces her irrevocably."

If the woman is prosecuted on the complaint of a person other than her husband, he or she must arrange for a divorce before the sentence can take effect.

Section 31.—We are of opinion that this section enacts a rule dictated by military requirements and should be retained. Occasion will seldom arise in future for new villages being erected within 5 miles of the Border but the Commissioner should retain the power conferred upon him by this section. Doctor Zia-ud-Din does not agree and his view is given in the footnote.*

Section 32.—Section 32 is a corollary of the rule enacted in the preceding section. The Local Government should have power to direct the removal of any village situated in close proximity to the Frontier. As regards compensation the section makes the Local Government the sole judge of the amount. In this respect it requires amendment. In our opinion a rule similar to the one contained in section 3 (2) to (4) of the North-West Frontier Province Public Safety Regulation, 1931, which closely follows the lines laid down in the Land Acquisition Act, should apply to cases under section 32, Frontier Crimes Regulation. Accordingly we recommend that the words—

> " and award to the inhabitants such compensation for any loss which may have been occasioned to them by the romoval of their village as in the opinion of the Local Government is just."

be replaced by the following words :—

> " and the amount of compensation shall be determined by the Deputy Commissioner and where the Deputy Commissioner and the person claiming compensation differ as to the sufficiency of the compensation or where any dispute arises as to the apportionment of the compensation the Deputy Commissioner shall refer the difference or dispute to the decision of the district courts ", and
>
> " an appeal shall lie to the Judicial Commissioner against the decision of the District Court."

Section 33.—Section 33 runs as follows :—

Regulation of Hujras and Chauks.

> " (1) No building of the kind commonly known as a Hujra or Chauk, and no building intended to be used as a Hujra or a Chauk, shall be erected or built, and no existing building not now used as a Hujra or Chauk shall at any time be used as such, without the previous sanction, in writing, of the Deputy Commissioner."
>
> " (2) Whoever contravenes the provisions of sub-section (1) shall be punishable with imprisonment which may extend to 6 months, or with fine or with both."

The word Hujra, if left unqualified, will lead to the necessity of permission of the Deputy Commissioner for the construction of private male apartments which a person residing in a village intends to build for his own use. We have been told that there are Hujras in villages which afford accommodation to

*Clause 31 in my opinion was necessary in 1901 when these regulations were first framed. The boundary of British India at that time was the boundary of the Punjab. Trans border tribes were really independent. All our fortifications existed in settled districts all along their boundary lines. On account of the constant raids in British territories by trans-border tribes, the land within five miles of the frontier of settled districts was in reality a war zone. It was therefore necessary for the safety of the people at that time that no new village or building which is capable of being used as forification should be built in the war zone without necessary precautions. The situation, however, has now substantially changed. The boundary line of the settled districts is no longer the boundary of British India, which has been extended to the Durand line. Custom duty is not collected at Jamrud which is the boundary of the settled districts but at Landikhana which is on the Durand line and at the border of Afghanistan.

Since 1912, the land lying between the settled districts and the Durand line, has officially ceased to be called 'independent territory', and is now called tribal territory. In fact the Political Officer can more effectively execute his orders in tribal territory than a Deputy Commisioner can do in settled districts. Political Officers can serve summonses, realise fines and execute the orders of the Court more readily than a Deputy Commissioner can do.

In tribal territory, roads are now built, Military posts are erected and even Railway lines are opened. In fact the most important fortifications in the North-West Frontier are not in the settled districts but in Tribal territories.

(Darosh, Miran Shah, Landikotal, Razmak, Wana, Parachinar and Malakand.) Besides the method of warfare has now substantially changed. The Air Force and heavy guns have almost stopped the raids of the old type. The system of Khassadars is an effective check on the movements of the trans-border tribes. The provision of this section is now a superfluous restriction on the natural growth. The Province is a small one and it cannot afford to lose the possibilties of development in this five miles zone, which is a very fertile land.

If this section is retained then the Frontier of British India should mean what it really is at present (*i.e.*, Durand line) and not what it was thirty years ago *i.e.*, the boundary of settled districts.

people in the neighbourhood possessing no male apartment of their own, for themselves and for their guests and which provide a common meeting place for the residents of the village or a section thereof. We think that places of this description should require the permission of the Deputy Commissioner as they need a certain amount of supervision to prevent the assemblage of bad characters and to make someone responsible for the legitimate use of what is a semi-public place. The same considerations do not apply to a man's private quarters primarily intended for his own comfort though it may also be used by his own guests when occasions arise. We do not think that the right of a person to provide himself with male apartments as an adjunct to his house should be subject to any restriction. The permission of the Deputy Commissioner should not be necessary for a building of this character. The word 'Hujra' is applicable and is at least in common use for a building of this description. We think that a clear distinction exists between a private Hujra and a semi-public Hujra. Section 33 should be limited to the latter.

The word 'Chauk' has no well-defined meaning so far as we have been able to ascertain. It signifies the same thing as a Hujra in certain parts of the Province.

We are of opinion that a proviso should be added to Section 33 (1) to the following effect :—

> "Provided that no sanction of the Deputy Commissioner shall be necessary for building, or using an existing building as a Hujra or a Chauk *bona fide* intended for the private use of a person, his relations and guests."

Section 34.—This section runs as follows :—

"1. Where the Deputy Commissioner is satisfied that any building is habitually used as a meeting place by robbers, house breakers, thieves or bad characters or for the purpose of gambling, he may, by order in writing—prohibit the owner of the occupier thereof from so using such building, and, if the order is not obeyed, may, by a like order, direct that the building be demolished. Such further order shall be without prejudice to any punishment to which the owner or occupier of such building may, under any law for the time being in force, be liable for disobedience of the prohibitory order.

2. No person shall be entitled to any compensation in respect of the demolition of any building under sub-section I."

It will be observed that the section does not empower the Deputy Commissioner to direct, in the first instance, demolition of a building used in the objectionable manner therein referred to. It is only after an order prohibiting such use is disobeyed that the Deputy Commissioner can have that building demolished. It follows that, before the Deputy Commissioner can exercise his power of ordering the demolition of a building, it is to be proved to his satisfaction that the owner or occupier thereof allowed it to be used by robbers, house breakers, thieves or bad characters or for the purpose of gambling, in most of which cases he is either harbouring robbers or using it as a gambling den, and can generally be found guilty of some offence punishable under the Indian Penal Code or other enactment. No useful purpose can be served by the building itself being demolished which is a deliberate act of waste. A person convicted of any offence may be severely punished with fine in addition to imprisonment, which will affect his pocket and at the same time bring in money to the public funds to be usefully spent. We are not in favour of a provision of this kind being retained on the statute book. No instance has come to our notice in which the demolition of a building was ordered on the ground that it had been used as a meeting place by robbers, house-breakers, thieves or bad characters, or for the purpose of gambling. The cases in which such power was exercised and which have come to our notice are those in which the section could not properly apply by any stretch of imagination. In village Takkar, Sub-Division Mardan, two hujras were ordered to be burnt under the orders of the Joint Deputy Commissioner, Mardan Sub-Division shortly after a disturbance in 1930, in course of which a British Officer and a number of people lost their lives. The disturbance arose out of a political agitation. Similarly it appears from the Hathi Khel case in the Bannu District in 1930 that certain buildings, belonging to or used by local leaders of certain political movements were ordered to be destroyed by fire. Assuming the political agitators who assembled in the hujras ordered to be burnt were "bad characters" within the meaning of section 34,

which in our opinion is not the case, section 34 could not apply, inasmuch as no order in writing, required by that section, was given to the owners or occupiers prohibiting the use of the building for any of the objectionable purposes specified in the section. As already pointed out, it is only in case of disobedience that the extreme measure of ordering demolition of building can be resorted to. In view, therefore, of past events and of the possibility of the section being mis-construed and of the provisions being open to objection on principle, as already observed, we recommend that the section be repealed.

Section 35.—This section makes failure to provide for watch and ward by 'naubati' chaukidars (that is, persons who are responsible to do duty by turn) penal, the punishment being one of fine extending up to Rs. 100. We understand that the liability to provide watch and ward is regulated by local usages which are easily ascertainable. In the absence of the limits of such usages being clearly defined, difficulties are likely to arise on a prosecution being instituted. We suggest that a formal statement of customs for each village affected by the rule contained in section 35 be drawn up by the Deputy Commissioner, specifying the liability of those responsible for providing watch and ward after hearing objections, if any, by the village community concerned or any member thereof. If the usages are recorded in the Wajib-ul-arz without any ambiguity, no difficulty can arise. The Punjab Village and Small Towns Patrol Act may well be adopted as a model where it does not conflict with local customs.

Section 36.—Section 36 runs as follows :—

"Where in the opinion of the Deputy Commissioner, any person—

(*a*) is a dangerous fanatic ; or

(*b*) belongs to a Frontier Tribe, and has no ostensible means of subsistence or cannot give a satisfactory account of himself ; or

(*c*) has a blood-feud ; or

(*d*) has occasioned cause of quarrel likely to lead to blood-shed,

the Deputy Commissioner may, by order, in writing, require him to reside beyond the limits of the territories to which this Regulation extends, or at such place within the said territories as may be specified in the order :—

Provided that, if the person has a fixed habitation in the place which the Deputy Commissioner requires him to leave, an order under this section shall not be made without the previous sanction of the Commissioner."

This in our opinion should be so amended as to be inapplicable to British subjects residing in British Territory. The expression "dangerous fanatic" is very vague, but it obviously refers to a person who is more dangerous than one referred to in section 110 (*f*) Criminal Procedure Code, that is, a person who is "so desperate and dangerous as to render his being at large, without security, hazardous to the community". The proper course seems to be to call upon a person believed to be a "dangerous fanatic" to furnish security under section 110, Criminal Procedure Code. Deportation under section 36, without evidence and without a right of appeal is not justified. The same consideration applies to a person who is believed to have a blood-feud. If there is a danger of the breach of the peace, proceedings under section 107, Criminal Procedure Code, are more appropriate than deportation. Clause (*d*) is extremely vague, and has been applied to cases which are hardly covered by it, unless the language be unduly strained. An instance came to our notice in which a prostitute was ordered, under section 36, to leave a particular place and reside at another lest the quarrel between her paramours should lead to blood-shed. In our opinion the section should be so amended as to limit it to cases coming within the purview of clause (*b*) that is, to a person belonging to a frontier tribe and not having ostensible means of subsistence, who may be ordered to reside beyond the limits of this Province. Captain Hay, Joint Deputy Commissioner, Mardan, is of the same opinion. We make a recommendation accordingly.

Section 37.—This makes infringement of the provisions of certain sections punishable, and calls for no remarks.

Section 38.—This section confers additional powers on private persons in the matter of arrest of certain offenders. Sub-section (4) (*b*) appears to us to be dangerously worded. It entitles a private individual to cause the death of a person 'if a hue and cry has been raised against him of his having been concerned in any such offence" as is specified in clause (*a*). We do not think that it is safe to encourage private individuals to resort to extreme violence only because a hue and cry has been raised against a certain person of his having

committed an offence. Advantage may be taken of the provision by enemies of a person against whom either a hue and cry has been raised in good faith or has been engineered. In this view we recommend that section (4), clause (*b*), be deleted.

Section 39.—This may be retained.

Section 40.—Section 40 (1) empowers the Deputy Commissioner to order a person to furnish security " for the purpose of preventing murder or culpable homicide not amounting to murder, or the dissemination of sedition ". Substantially there is no difference between this provision and sections 107 and 108 of the Criminal Procedure Code, except in the following particulars :—

(*i*) Section 40 (1) dispenses with evidence to be taken in court in the presence of the accused, whereas sections 107 and 108, Criminal Procedure Code, do not.

(*ii*) Orders under section 40 (1) are to be passed by the Deputy Commissioner, whose order is final, subject to revision by the Commissioner on the ground of irregularity ; while proceedings under sections 107 and 108, Criminal Procedure Code, can be taken by a Magistrate, I Class, whose orders can be appealed from to the District Magistrate (who is also the Deputy Commissioner in this province) and the proceedings are subject to revision by the Judicial Commissioner within the limits of sections 435 and 439, Criminal Procedure Code.

(*iii*) Security can be demanded under section 40 (1) for a period of three years ; whereas under sections 107 and 108, Criminal Procedure Code, the period cannot exceed one year.

In our opinion sections 107 and 108, Criminal Procedure Code, can meet all practical requirements and at the same time afford satisfactory protection to the person proceeded against, which section 40 (1) does not. If the safeguards provided for by sections 107 and 108, Criminal Procedure Code, be introduced in proceedings under section 40 (1), the latter will cease to possess any distinctive features.

In practice section 40 (1) has been stretched much beyond its proper scope. We have found cases in which it was resorted to to compel a person to give his daughter in marriage or to divorce his wife in obedience to a decree passed under section 8, Frontier Crimes Regulation. The provision was freely used in political cases, *e.g.*, where a person was required to furnish security because he " assisted in the management of the ' khilafat ' volunteers after they have been declared an unlawful association " or where " he goes frequently to Lahore and is in touch with the agitation in the Punjab, and that he attended a highly seditious conference of the *ulama* in Lahore this month and there was awarded a medal for his work ". Mr. Abdur Rab Nishtar has filed copies of a number of orders passed under section 40 against political workers. It is not necessary for us to refer to every one of them in detail. It is enough to say that in most of them there was no murder or culpable homicide to be prevented, nor was there any " sedition " to be checked. The word " sedition " has a well-defined meaning, and cannot be extended to include all political activities, though they may not be agreeable to district officers. People were bound over for uttering political slogans and for picketing. There is a volume of evidence which shows that the section is very unpopular. Many officers think that it may be dispensed with.*

Section 40 (2) to (5) make incidental provisions in connection with proceedings under section 40 (1). No case has come to our notice in which a Council of Elders was associated with security proceedings. We do not think they are called for.

In our opinion, the whole of section 40 should be repealed.

Section 41.—Section 41 empowers the Deputy Commissioner, on the recommendation of a Council of Elders or after enquiry by himself, to bind over all or any of the members of two families or of one of them to prevent blood-feud. Both Sir Hamilton Grant and Sir John Maffey have expressed disapproval of the working of its provisions. We quote the following from the former's circular of 19th July 1920 :—

" This section is, in the opinion of the Chief Commissioner, much too freely used. This is due in a great measure to constant criticisms

**E.g.*, Mr. Fraser, Judicial Commissioner, North-West Frontier Province ; Captain Hay, Joint Deputy Commissioner, Mardan and Mr. Almond, District and Sessions Judge, Peshawar.

> of the Police by the Magistracy and superior Police officers implying that a particular offence could have been prevented by timely security proceedings Such comments are not only improper, but they are usually untrue in fact. There are cases undoubtedly where the danger of blood-shed is obvious and imminent and cases where one or both of the parties apply for security to be taken, and in such cases security under section 41, Frontier Crimes Regulation, is called for. But in many hundred of cases where security of this kind is taken, the proceedings have merely served to give publicity to private and domestic unpleasantness which would otherwise be amicably settled, and to afford a handle to unscrupulous persons to dishonour their opponents. If security under this section were really a deterrent, there would have been a general reduction in violent crime proportionate to the number of securities taken out, but this has emphatically not been the case. The excessive use of this section causes considerable private distress and alienates the community, and the Chief Commissioner desires that the experiment should at once be made of reducing its operation to a minimum."

Sir John Maffey endorses these remarks in his circular, dated the 14th November 1922. It is very difficult to say in practice which of several members of the family supposed to have blood-feud with another family is likely to cause blood-shed. To bind over the whole family is not only improper but futile.

Unless security be taken afresh after the expiry of 3 years, apprehension of murder in pursuance of a blood-feud will not cease. It cannot be denied that, in spite of extensive use having been made of these provisions at one time the number of murders was not reduced. The mis-use of the section pointed out by Sir Hamilton Grant cannot be avoided in view of the wide scope of the section. We think, for all practical purposes, that section 107, Criminal Procedure Code, will be found to be adequate, where there are tangible grounds for believing that a certain person is likely to commit a murder in pursuance of a blood-feud. To entertain fears of blood-feud on a certain murder being committed will lead to the necessity of proceedings under section 41 being taken against those belonging to the family of the murdered man, which will greatly add to their distress. Failure on their part to furnish securities will involve the consequences of their being sent to prison shortly after the murder, it may be, of the principal man of the family.

For these reasons we are in favour of the repeal of section 41.

Sections 42 to 47.—They contain provisions incidental to proceedings under sections 40 to 41, and will have to be repealed if those sections are deleted from the Frontier Crimes Regulation.

Section 48.—Section 48 provides that no appeal shall lie from any decision given, decree or sentence passed, order made, or act done, under any of the provisions of the Frontier Crimes Regulation. In view of the recommendations that we have made, we need not express any views on this section. We have indicated at proper places how far an appeal is permissible in deciding civil or criminal cases under sections 8 and 11, Frontier Crimes Regulation, as they now stand.

If our recommendatons are given effect to, no special provision for appeal need be made. Decrees of the Deputy Commissioner, which will be passed under section 8, if amended as we suggest, will be subject to revision by the Judicial Commissioner.

Sections 49 and 50.—If our recommendations are given effect to, section 50 becomes unnecessary. Section 49 will be enough to cover cases in which orders may be passed by the Deputy Commissioner.

Sections 51 and 52.—These sections will become unnecessary if our recommendations are given effect to.

Sections 53 and 54.—The wordings of these sections will have to be slightly altered if our recommendations are given effect to.

Section 55.—This section should stand.

Section 56.—Section 56 refers to fines imposed on persons belonging to a "frontier tribe". If the words "frontier tribe" be defined in the manner we have suggested then the section may be retained. But we do not understand how any Deputy Commissioner can, in that case, enforce the payment of fine against one who is not a British subject, not owning property in British India. If, however, "frontier tribe" be not so defined as to exclude British Indian

subjects, we are clearly of opinion that the provisions of section 56 are undesirable. Liability to pay a fine is so personal that it is highly unjust to enforce it against the relatives of the person who has incurred the liability. In any case, section 56 should be so amended as to be inapplicable to British subjects.

Section 57.—This section goes with sections 12, 18 or 22.

Section 58.—This may be retained.

Section 59.—Offences under sections 29 and 30 should be triable by a magistrate of the first class or Court of Session according to the procedure laid down in the Criminal Procedure Code and not otherwise.

Sections 60 to 64.—These sections call for no remarks.

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CHAPTER VIII.

FRONTIER MURDEROUS OUTRAGES REGULATION.

(REGULATION No. IV OF 1901.)

This Regulation was enacted " for the suppression of murderous outrages in certain frontier tracts ". It enacts rules of substantive law as well as of procedure. Primarily, the Regulation was intended to apply to a " fanatic ". The term " fanatic " is nowhere defined, but may be taken to mean one who is animated by excessive and mistaken religious zeal.

Section 2 (1) runs as follows :—

> " Any fanatic who, within the meaning of the Indian Penal Code, commits, or does any act with such intention or knowledge, and in such circumstances, that, if he by that act caused death, he would commit murder, shall be punishable with death or with transportation or imprisonment for life, and all his property shall be forfeited to the Government."

It will be observed that a fanatic is punishable with death or transportation for life not only when he commits murder, but also when he is guilty of an attempt to commit murder or of doing some act falling short of murder or attempt to commit murder, which is done with the intention of committing murder and in such circumstances that, assuming that he caused death, he would commit murder. Many acts of preparation to commit murder are covered by the language quoted above. He is liable to be sentenced to whipping, in addition to transportation or imprisonment. Where a fanatic is killed in the act of committing such an offence as described above, or dies of wounds received in the course of commission of such an offence, an inquest is to be held into the circumstances of his death, and the court may order the forfeiture of his property.

The procedure prescribed for the trial of a fanatic, accused of an offence referred to, is summary. There is to be no magisterial proceeding preliminary to commitment. He is to be tried straight away by a Sessions Judge, a Deputy Commissioner or a Magistrate, I Class, specially empowered in this behalf by the Local Government, with the aid of two or more assessors.

The officer trying him need not write a judgment, except so far as to specify the offence of which the accused is convicted and the sentence awarded. The sentence may be directed to be carried into execution forthwith ; but the court may direct its postponement for a certain time.

No appeal lies from an order of conviction under this Regulation. Nor is the sentence of death subject to confirmation by any higher tribunal.

There is no bar to the accused being defended by a legal practitioner or to his cross-examining witnesses or addressing the court. The body of the offender may be disposed of by the court in any manner it deems expedient.

There are provisions authorising the Local Government to confine any person charged with or suspected of an intention to commit the offence already described. Any magistrate, I Class is authorized to arrest a suspected person and detain him pending the orders of the Local Government, to whom the fact is to be reported.

A police officer is empowered to arrest any person reasonably suspected of having an intention to commit an offence of the kind mentioned in the Regulation already referred to, and section 110 (*f*), Criminal Procedure Code, is made applicable to such person. In other words, the suspicion of a police officer is conclusive for security being demanded from him. Such a person may be ordered to reside beyond the limits of the territories to which the Regulation applies, in addition to furnishing security under section 110.

Lastly, any person or a community may be fined, or an order of forfeiture of their property may be passed, if, on the recommendation of a Council of Elders, the court finds that the fanatic associated with such community or person in circumstances which satisfy the court that, by reasonable prudence or diligence on the part of such community or person, the commission or attempted commission of such offence might have been prevented. This order is, however, subject to confirmation by the Local Government.

These are the salient features of the provisions contained in the Regulation. They might have been justified at a time when attacks by fanatics were frequent and special measures were needed to make the lives of those engaged

in duty as safe as possible. During the last 30 years only 14 cases were tried under the Murderous Outrages Regulation.

We have not been able to inspect all the files, as some of them either do not exist or could not be traced. It is doubtful whether some of the cases to which the Murderous Outrages Regulation was applied were really those of fanatics. Again, in some cases the offenders were not prompted by fanaticism but by motives of revenge, however outrageous in themselves. Assuming all the cases were such as to be the proper subjects of the Murderous Outrages Regulation, their number during the last 30 years is comparatively small, and certainly much smaller than the number of similar outrages occurring in other parts of India. It makes no difference whether a man is a religious fanatic or a political fanatic. The ordinary law is quite sufficient to deal with cases of this description. The crime of murder is punishable, under the Indian Penal Code, with death ; and that of attempt to commit murder is punishable with transportation for life, or ten years' rigorous imprisonment, if no hurt is caused. Capital punishment, in cases other than murder, is repugnant to public feeling and should be confined to murder cases only. We have not been able to trace any case in which a person was prosecuted under the Murderous Outrages Regulation for anything falling short of murder, or attempt to commit murder ; nor have we been able to trace any case in which persons suspected of being fanatics were bound over under section 110 (*f*), Criminal Procedure Code. The inference is that provisions applicable to the two classes of cases last mentioned are not needed.

Considering the present circumstances in the province, we do not think that Regulation IV of 1901 need be retained on the statute book.

CHAPTER IX.

North-West Frontier Security Regulation.

(Regulation No. IV of 1922.)

This Regulation was originally passed for three years. It was subsequently extended, and expired in March 1931. The terms of reference to this Committee require us to determine whether, in our opinion, it should be re-enacted.

A Regulation like this is not needed in normal times. It is only when religious or political excitement on a large scale exists in any part of the province that right of entry into the province is interfered with, and in certain circumstances the Chief Commissioner should be armed with the powers which the Regulation confers upon him. At the same time, the existence of such a Regulation exacerbates public feeling and affords a handle to hostile critics of the Government. The present atmosphere in the province is not such as to attract such people from outside whose presence is calculated to accentuate any existing difficulties. If political conditions in the country do not take a different turn, it is better to avoid public ill-will and to leave the Regulation in abeyance, as it, at present, is. Political conditions in this province, as elsewhere, are uncertain ; and it is possible that in future some movement or other on a large scale may be set on foot, in which case the Local Government should have power to regulate the entry of people from outside. If sure indications of such emergency are afforded in future and the Local Government thinks it necessary to be armed with the powers in question re-enactment of the Security Regulation will, in our opinion, be desirable. Its immediate re-enactment may serve no useful purpose, if present conditions continue, and will, on the other hand, give occasion to hostile critics for adverse comments on the policy of the Government. For all day-to-day purposes, section 144, Criminal Procedure Code, should suffice.

If the re-enactment of the Regulation is decided upon in future, the amendment hereinafter mentioned should, in our opinion be made.

Section 3 empowers the Chief Commissioner to proceed against " any person ", with the result that a *bona fide* resident of this province can be debarred from entering it, or from going outside certain limits, and so on. In our opinion, its application should be confined to outsiders, whose entry or presence will be prejudicial to the peace and good government of the province. As regards the inhabitants of the province, in case any of them conducts himself in a manner not warranted by law, security or other proceedings appropriate to the conduct should suffice. Accordingly, we suggest the insertion of the following words after the words " any person " in section 3 :—

" not being a *bona fide* resident of a place within the limits of the North-West Frontier Province."

CHAPTER X.

North-West Frontier Public Safety Regulation.

(Regulation No. III of 1931.)

We have carefully considered the provisions of this Regulation and find its provisions to be reasonable and not calling for any amendments. The Regulation was enacted for one year, and will expire a few months hence. In these circumstances, we do not recommend any alterations in its provisions.

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CHAPTER XI.

North-West Frontier Province, Law and Justice Regulation.

(Regulation No. VII of 1901.)

The greater part of this Regulation, as originally enacted, had been repealed and re-enacted as part of another statute before this Committee was constituted. There is not much left in the Regulation as it now stands which calls for examination. Section 9, however, requires consideration. It deals with legal practitioners of all classes, including Barristers. The Legal Practioners Act not being in force, enrolment and disciplinary action regarding legal practitioners are regulated by rules framed by the Local Government under section 9 (2) of this Regulation. We think that the Legal Practitioners Act should apply to this province, as it does elsewhere. The Judicial Commissioner's court not being a Chartered High Court, the rules which will have to be framed under the Legal Practitioners Act will require the sanction of the Local Government, so that if the aforesaid Act is made applicable, the control of the Local Government will not disappear. At the same time, certain rights and obligations of the Bar will be governed by statute and cease to be solely dependent on rules which can be altered by Chief Commissioner. There may not be a substantial difference between the rules now applicable to the legal profession and those which will apply if the Legal Practitioners Act, is extended to this province ; but the absence of statutory provisions makes an appreciable difference between the status of the legal profession in this province and elsewhere. Mr. Fraser, Judicial Commissioner, does not object to the extension of the Legal Practitioners Act, though he thinks that the rules now in force are not different in any material particulars. We are of opinion that the change suggested by us will be greatly appreciated by the Bar without causing any administrative or disciplinary complications.

CHAPTER XII.

Summary of Recommendations.

In view of frequent references to certain sections of the Regulations with which this Report deals and for facility of reference, we make the following Regulations part of Appendix IV :—

(1) Frontier Crimes Regulation (No. III of 1901).

(2) Murderous Outrages Regulation (No. IV of 1901).

(3) North-West Frontier Security Regulation (No. IV of 1922).

(4) North-West Frontier Safety Regulation (No. III of 1931).

Briefly our recommendations are :—

(1) *Frontier Crimes Regulation.*—The Deputy Commissioner should have exclusive jurisdiction to try all suits of a civil nature in which one of the parties resides in the tribal territory and no claim to immoveable property is involved, provided that the value of the subject matter does not exceed Rs. 500. The Deputy Commissioner should be empowered to refer all questions of facts to arbitration each party to nominate at least one arbitrator, and the third, who will be the umpire, to be nominated by the Deputy Commissioner. If the parties refuse or neglect to nominate arbitrators, the Deputy Commissioner should do so in accordance with paragraph 5 of Schedule II, Civil Procedure Code. The arbitration should be compulsory and not dependent upon the agreement of parties. Parties should be, allowed to be represented by legal practitioners, if they so desire. The Deputy Commissioner should himself decide all questions of law arising in the case. The decree of the Deputy Commissioner shall not be open to appeal, but a revision should lie to the Judicial Commissioner within the limits laid down in section 25, Provincial Small Cause Court Act. The Deputy Commissioner should have power to delegate his powers to decide civil cases to any senior officer subordinate to him, *e.g.*, Assistant Commissioner or Extra Assistant Commissioner.

As regards trial of criminal cases, the dual system which now exists should be discontinued. The Deputy Commissioner should have no power, as he now has, to exclude the jurisdiction of a Magistrate or Sessions Judge by making a reference to a Council of Elders sitting apart from the judge (Deputy Commissioner). The tribunal should consist of judge and jirga acting as jury, sitting together, and empowered to pass any sentence provided for by the Indian Penal Code, including sentence of death. The judge should be the Sessions Judge and not the Deputy Commissioner, as now. The present jirga list should be made a list of jurors after careful revision. Parties should be allowed to be represented by legal practitioners. The provisions of the Code of Criminal Procedure relating to jury trials before a Sessions Judge should apply. This mode of trial should be limited to cases of murder, culpable homicide, attempt to commit murder, abduction, kidnapping, dacoity and causing disappearance of evidence (under sections 302, 304, 307, 308, 363, 370, 391, 398 and 201, Indian Penal Code), whenever committed to the court of session. Such cases should not be otherwise triable. No legislation is necessary to give effect to these recommendations. The Local Government can, by a notification under section 269, Criminal Procedure Code, extend the provisions contained in the Criminal Procedure Code for trial by jury of that class of cases in such parts of the province as it deems fit. If this is not done, this class of cases, like others, should be triable according to the provisions laid down in the Criminal Procedure Code. Sections 11 to 20 Frontier Crimes Regulation, should in any case be repealed.

Rai Sahib Mehr Chand Khanna agrees with the other members that the present mode of trial under the Frontier Crimes Regulation should be discontinued and replaced by the jury system proposed by the Committee, but is of opinion that if the jury system is not introduced trial of cases under the sections already mentioned should be in accordance with sections 11 to 20 Frontier Crimes Regulation, subject to the modifications mentioned in his separate note.

Section 21 Frontier Crimes Regulation should be retained, but the words "frontier tribe" occurring in that section should be so defined as to exclude

British Indian subjects. The definition should be incorporated in an explanation to be appended to the section.

Sections 22 and 23, which provide for a village or part thereof being fined as a whole should be repealed. Only such person or persons as are found guilty of any offence mentioned in section 22 should be punished. Rai Sahib Lala Mehr Chand Khanna differs from the other members as regards section 22, and would retain it, subject to slight modifications, for the reasons given in his separate note.

Sections 24 to 28 go with section 22, and no separate recommendation is necessary.

Section 29 should be modified so as to exclude from its operation persons, found in certain areas therein mentioned, merely carrying arms after sunset or before sunrise. It should run thus :—

> "Where a person is found carrying arms after sunset and before sunrise in any military camp or cantonment or municipality in such circumstances as to afford grounds for believing that the arms are being carried by him with intent to commit a cognizable offence, he shall be punishable with imprisonment for a term which may extend to five years or fine, or with both, and the arms carried by him may be confiscated,"

Section 30 should be retained with the amendment that it should be confined to Muslims and that the following proviso should be added to it :—

> "Provided that on the conviction of such woman the sentence passed on her shall not take effect unless the husband divorces her irrevocably."

Section 31 should be retained. Doctor Ziauddin Ahmad is of opinion, for reasons given in his separate foot note, that it should be repealed.

Section 32 should be retained, subject to the amendment that the procedure in awarding compensation should be on the lines of section 3, Safety Regulations of 1931 which itself follows those of the Land Aequisition Act.

Section 33 should be retained with the amendment that the following proviso be added to it :—

> "Provided that no sanction of the Deputy Commissioner shall be necessary for building or using an existing building as a hurja or chauk *bona fide* intended for the private use of the person, his relations or guests."

Section 34, which empowers the Deputy Commissioner to order demolition of buildings which he has reason to believe are used for harbouring robbers or as gambling dens, should be repealed and the offenders should be dealt with under the ordinary criminal law.

Section 35 should be retained with the amendment that the Deputy Commissioner should draw up a formal statement of customs obtaining in each village liable to provide *naubati* chaukidars after hearing objections, if any, by the village community concerned.

Section 36 should be so amended as to limit it to cases coming within the purview of clause (*b*), *i.e.* : to a person belonging to a frontier tribe and not having ostensible means of subsistence. Rai Sahib Lala Mehr Chand Khanna would apply section 36 (4) (*b*) to British Indian subjects as well, for the reasons given in his separate note. He is in agreement with the other members as regards repeal of section 36 (*a*) to (*c*).

Section 37 is incidental to other sections and needs no separate treatment.

Section 38 should be retained, subject to the amendment that sub-section (4) (*b*) should be deleted.

Section 39 should be retained.

Section 40 and 41 should be repealed.

Section 42 to 47 are incidental to sections 40 and 41, and require no special treatment.

Section 48 relates to appeals, and in view of the recommendations no provision is necessary.

Section 49, which deals with the revisional jurisdiction of the Commissioner, should continue to apply to all orders which a Deputy Commissioner is competent to pass, having regard to the other recommendations.

Section 50 will no longer be necessary if the recommendations made by the Committee be given effect to.

Sections 51 and 52 will become unnecessary if the Committee's recommendations are given effect to.

Sections 53 and 54. The words of these sections will have to be altered consequent on the recommendations of the Committee being given effect to.

Section 55 should stand.

Section 56, which provides for fines being imposed on persons belonging to a " frontier tribe " in certain cases should be retained, with the amendment that the words " frontier tribe " should bear the meaning which we recommend should be given thereto in section 21. If, however, the expression " frontier tribe " be made to apply to British subjects, section 56 should be so amended as to limit the liability to pay the fine imposed to the person punished and not to extend to his relatives.

Section 57 is incidental to sections 18 and 22 and calls for no special treatment.

Section 58, which relates to maintenance of certain registers, should be retained.

Section 59 should be slightly amended so as to make offences under sections 29 and 30 triable under the Criminal Procedure Code and not otherwise.

(2) *Murderous Outrages Regulation.*—This Regulation should be repealed.

(3) *North-West Frontier Province Security Regulation.*—It has already expired. The present atmosphere in the province is not such as to require its re-enactment ; but if some movement is set on foot on a large scale in the province, which, in the opinion of the Local Government requires its re-enactment, it may be revived with the amendment that it should not apply to *bona fide* residents of this Province.

(4) *North-West Frontier Safety Regulation.*—The Regulation was enacted for one year and is to expire a few months hence. No recommendation is, therefore, necessary.

(5) *North-West Frontier Province Law and Justice Regulation.*—The Legal Practitioners Act be made applicable to the legal practitioners practising or desiring to practise in this province and section 9 be suitably amended.

NIAMATULLAH.

ABDUL GHAFUR KHAN.

M. SHAH NAWAZ.

ZIAUDDIN AHMAD.

MEHR CHAND KHANNA (Subject to my note.)

HUKAM CHAND.

MOHAMMAD JAN.

ABBOTTABAD ;

Dated the 27th August 1931.

L505FD

Note by Rai Sahib Lala Mehr Chand Khanna.

I have signed the main report subject to this separate note of mine on certain points on which I am not in entire agreement with my colleagues.

Certain peculiar conditions, which have been found to exist by my colleagues, in my opinion exist to a greater degree than they are inclined to hold. Proximity of the settled districts to the tribal territory leads to social intercourse between the inhabitants of that territory and those of the British Territory to a greater extent as is borne out by the evidence of some of the witnesses on whose evidence the main report is based. The problem of outlaws arising out of the proximity of the Tribal Territory is in my opinion more acute than what my colleagues are inclined to hold.

As regards chances of suppression of evidence I would like to add that particular classes of inhabitants residing in areas predominantly populated by people not belonging to those classes will find considerable difficulty in procuring evidence which does exist but is not forthcoming for want of sympathy towards them.

In view of the extent to which, in my opinion, the conditions above referred to, exist, certain provisions of the Frontier Crimes Regulation with some modifications are necessary.

I have already expressed by concurrence with my colleagues regarding certain implications of section 22 and unfair results which may arise in certain cases. At the same time I feel that in the interest of the classes of population to which reference has been made above, a provision is necessary to effectively deal with a combination of the entire population of a village or part thereof. It is not my intention to recommend that the whole village or part thereof should be fined for the acts of a few. I would restrict section 22 so far as is possible to such population of the village as can be held reasonably responsible for untoward consequences to others. Section 22 should make the entire population of a village punishable if the circumstances justify the conclusion that the village as a whole is responsible ; it should apply to the population of part of a village if responsibility can be fastened to such part and not to the entire village ; if responsibility can be attributed to specified individuals the population of the village or part thereof should not be collectively liable. In this view, the alteration which I propose and which, while safeguarding the interests of those clearly innocent, will punish those reasonably believed to be guilty, will meet all the requirements of the case. I propose that the last three words " as a whole " be deleted and the words " as the case may be " be substituted therefor. I would also add a proviso to the following effect—

> " Provided nothing herein contained shall render women and children under the age of 15 liable to punishment under section 22, unless it is specifically proved that any particular woman or child was guilty of an act amounting to an offence."

I would retain section 57 so far as it relates to the Deputy Commissioner's discretion in the disposal of fine recovered under section 22. It should be open to him to compensate a deserving person with the whole or part of the fine imposed under the aforesaid section.

Another section of the Frontier Crimes Regulation which should in my opinion be partly retained is 36. Cases sometimes occur in which the removal of a person from his or her abode is necessary in the interests of public tranquility. It is easily conceivable that a certain individual residing in one of the settled districts may be either the cause of local unrest or his presence accentuates it. In my opinion anything which has the effect of disturbing the atmosphere in British territory which may have its repercussions in the Tribal Territory should be scrupulously avoided. For these reasons I differ from the main report only so far that section 36, clause (*d*), modified as below, should be applicable to British subjects as well as to the inhabitants of the Tribal territory—

> I would add the words " or to a breach of the peace " after the words " blood-shed " in clause (*d*).

As regards section 36, clause (2), (*b*) and (*c*), I adhere to the view which I expressed in common with other members.

My colleagues have expressed the opinion that if the jury system as proposed by us, is not introduced the trial of criminal cases should be regulated by the provisions of the Criminal Procedure Code, other than those relating to

Jury trial. While, being in favour of the Jury system proposed in the main report, I am of opinion that the provisions of the Criminal Procedure Code, other than those laid down for Jury trials will not be adequate to meet the peculiar state of crime in this Province. In my opinion section 11, Frontier Crimes Regulation, with the modifications which I will presently suggest is a better alternative. I would, however, confine it to offences mentioned in the main report as those triable by Jury. No other offences should be triable in accordance with the procedure laid down by the Frontier Crimes Regulation. The modification that I propose to section 11 is as follows :—

Where in the opinion of the Deputy Commissioner it is inexpedient that the question of the guilt or innocence of any person or persons accused of any offences, or of any several persons so accused, should be tried by a court of any of the classes mentioned in section 6 of the Code of Criminal Procedure, 1898, the Deputy Commissioner may after hearing the person so accused (through his accredited agent or legal adviser, if he so desires) and deciding his objections, if any, by order in writing giving reasons why it is considered inexpedient, refer the question to the decision of a Council of Elders and require the Council to give a finding on questions of facts after recording such evidence as is produced before them on both sides and hearing the accused person. There shall be an uneven number of members of Council of Elders and in no case less than five nor more than nine, and they shall be nominated by the Deputy Commissioner in accordance with the provisions hereinafter laid down.

When a reference to a Council of Elders is made under sub-section (1) the Deputy Commissioner shall nominate members out of a list prepared in accordance with the provisions hereinafter made, and shall announce their names to the accused, and as each name is announced, the accused shall be asked if he objects to be tried by such members and if he objects, his objection and the grounds on which it is based shall be taken down and such objection, if it falls within any of the clauses of section 278, Criminal Procedure Code, 1898, and is made out to the satisfaction of the Deputy Commissioner, shall be allowed.

The Deputy Commissioner shall prepare and make out a list of persons liable to serve as members of a Council of Elders and qualified in his judgment to serve as such and not likely to be objected to under section 278 (*b*)—(*h*), both inclusive, of the Code of Criminal Procedure as before said.

Provision should be similar to those contained in sections 319 to 332 of the Code of Criminal Procedure as regards the list of the members, its publication and inviting objections to it.

On receipt of the finding of the Council of Elders the Deputy Commissioner may remand the question to the Council for a further or amended finding in case the finding given is either vague or ambiguous or deals with matters outside the reference or omits to deal with any of the matters included in the reference.

When the finding, amended finding, or further finding is received and is unanimous (or consists of a majority of 3|5th of the members), the Deputy Commissioner shall accept it and decide the question of fact in accordance therewith and convict the person or persons of any offence or offences of which the facts so found by the Council show him or them guilty or acquit him or them as the case may be, provided that in case he considers the finding, or the amended or further finding so perverse or against the weight of evidence as to amount to a clear miscarriage of justice, he may discharge the Council and refer the question to another Council similarly nominated.

In case the finding is not unanimous (or is not of the required majority), the person or persons shall be acquitted.

An express provision should be made to the following effect.

1. (*a*) The Council of Elders should maintain a record of their proceedings, including the names of witnesses and the substance of information given by each ;

(*b*) afford to the accused or the person proceeded against, an opportunity of putting questions ; and

(*c*) give a brief statement of reasons in support of their findings.

2. Provision with respect to whipping should be omitted.

3. A case once committed to the Court of Sessions, should not be withdrawn.

4. An order of conviction passed by the Deputy Commissioner shall be open to appeal on facts and law to the Commissioner.

MEHR CHAND KHANNA.

A note by Doctor Zia-ud-Din Ahmad, C.I.E., on crimes in the North-West Frontier Province.

Figures of murder cases.

The figures of murder cases quoted in the Police Administration Report are not intelligible to me. I thought that the number of reported cases should always be greater than the number of true cases.

In a particular year the number of true cases may be greater, as unduly large number of undecided cases may have been left over from previous year, but taking the average figures of two years, the reported cases should always be greater than the actual cases. It was argued in defence that some persons who may have been originally reported to the Police to have received grievous hurt, may have subsequently died. This argument does not appeal to me for two reasons :—

(1) I find that in the Punjab, Calcutta, and Bengal whose Police Administration reports were available to me, the average number of reported cases of murder in each place is greater than the true cases.

(2) The Police could not chalan an accused for murder, until some one is recorded as dead in the Police Register. The argument, if correct, will only increase the number of reported cases of grievous hurt and will not diminish the number of reported cases of murder.

The Police Administration Report of the North-West Frontier Province for the year 1925 (page 4) has given the average of reported and true cases for ten years from 1916 to 1925. The average reported cases of murder as given in the report is 502 and true cases is 536.

I myself calculated the average of reported and true cases of murder for 14 years whose figures were available to me :—

	Average reported cases for 14 years.	Average true cases for the same 14 years.
Calcutta	25	23
Bengal	538	455
Punjab	670	599
North-West Frontier Province ..	488	534

The actual figures are given at the end of this note. I then tried Calcutta. The probable amount of error in the figures of the North-West Frontier Province I assume that the true cases are 87 per cent. of the reported cases, which is the average of the figures of this Province whose administration report was available to me. The error comes out to be 20 per cent. The conclusions arrived at in the report are not effected, if we make a deduction of 20 per cent. in the figures of true cases of murder in the North-West Frontier Province.

In judging the criminality of a Province, we should no doubt give great weight to murder cases, but we should not neglect the crimes of the classes.

I give below the number of crimes per thousand population in all the six classes for the year 1928, being the latest year for which the Police Administration reports were available. North-West Frontier Province takes the lead in Crimes of class II (Serious offences against a person), but it does not take the lead in offences falling under other classes.

Class.	Offences.	Sections of Indian Penal Code.	North-West Frontier Province.	Punjab.	Bengal, excluding Calcutta.	Calcutta.
I	Against State, safety and Justice.	115-120, 131-136, 138, 231-254, 255-263, 212-216, 140, 170 and 171, etc.	·03	·06	·02	·08
II	Serious offences against persons.	302-308. 376, 346-348, 352, 353 and 304-A., etc.	·88	·29	·07	·36
III	Serious offences against persons and property or against property only.	392-402, 425, 428, 449-452, 311-401.	·59	·76	·57	·78
IV	Minor offences against persons.	341-344, 336, 337	·02	·02	·005	·06
V	Minor offences against property.	379-382, 406-409, 419, 420, 447 and 448, etc.	·38	·55	·42	4·55
VI	Other offences	295, 297, 269, 277, and 279, etc.	·62	·77	·34	11·1

MURDER CASES.

(Actual and Reported.)

Year.	N. W. F. Province.		Punjab.		Bengal.		Calcutta.	
	Reported.	Actual or true.	Reported.	Actual.	Reported.	Actual.	Reported.	Actual.
1929 ..	447	490	Not	available.	645	500	16	18
1928 ..	459	578	771	667	686	542	25	23
1927 ..	443	574	772	665	653	518	16	9
1926 ..	462	532	684	600	648	478	91	91
1924 ..	456	535	730	653	547	467	25	21
1923 ..	443	584	741	748	549	453	18	18
1922 ..	608	783	832	750	544	428	17	15
1921 ..	710	719	Not	available.	511	412	26	21
1920 ..	651	644	688	550	475	399	28	24
1919 ..	563	474	575	509	470	337	29	28
1918 ..	349	353	568	508	504	442	11	11
1917 ..	352	400	561	511	593	425	22	18
1916 ..	411	416	567	524	509	439	16	14
1915 ..	378	394	581	512	..	..	..	..
1914 ..	285	316	606	538	..	..	..	..
1913 ..	329	322	619	625	..	..	..	..
1912 ..	358	323	653	516	..	..	..	..
1911 ..	284	357	..	..	..	..	..	..
1910 ..	348	310	522	409	..	..	..	..
1909 ..	294	297	..	..	..	..	..	..
1908 ..	252	193	..	..	..	..	..	..
1907 ..	269	207	..	..	..	..	..	..
Average 24 and Years.	488	534	670	599	558	455	25	23

ZIA-UD-DIN AHMAD.

Appendices to the Report.

APPENDIX I.

(Copies of the Questionnaire in Pushtu and Urdu not printed.)

Questionnaire issued by the Frontier Regulations Enquiry Committee.

NOTE 1.—It is not necessary that every question should be answered by you. Those as to which you have no knowledge or have no opinion to offer may be left unanswered.

NOTE 2.—You may make observations as to any matter not referred to in the questionnaire but within the scope of the inquiry.

GENERAL.

1. What are the peculiar conditions prevailing in the North-West Frontier Province which, in your opinion, necessitate special laws, civil and criminal ?

Regulation III of 1901 (Frontier Crimes).

NOTE.—The letters " F. C. R." wherever they occur denote the Frontier Crimes Regulation III of 1901.

2. Assuming F. C. R. in its present or modified form is retained, will you recommend any particular areas or classes of inhabitants to be exempted from the aforesaid regulation or particular provisions thereof ? If so, please specify such areas and classes of inhabitants as, in your opinion, should be so exempted.

3. What are Pathan and Biluch usages as regards convening of *jirgas* in respect of—

(*a*) selection of the " Elders " ?

(*b*) their number ?

(*c*) matters within their cognizance ?

(*d*) their powers in awarding sentence or passing other orders ?

(*e*) the method of enforcing such sentence or orders ?

Is there any and, if so, what difference between Pathan and Biluch usages in the matters hereinbefore referred to ?

4. Do you think whipping is an appropriate sentence in the North-West Frontier Province in cases of offences under sections 304, 307, 324, 325, 326, 382, 392 to 399, 427, 429, 435, 436 and 448 to 460, I. P. C., in addition to a substantive sentence or otherwise ?

5. Do you think the scope of sections 8 and 9 is too wide ?

Should sections 8 and 9 be so amended as to be limited to particular classes of cases ?

Are you in favour of the aforesaid sections being repealed ? If so, what alternative and effective mode of preventing apprehended murder or serious offences, or of settlement of disputes between parties one of whom belongs to a frontier tribe, as the case may be, do you suggest ?

6. In what cases, if any, in your opinion, " it is inexpedient that the question of the guilt or innocence of any person or persons accused of any offence, or of any of several persons so accused, should be tried by a Court " ?

Please give reasons in support of your opinion.

7. Whether, in your opinion, Chapter III should be (1) repealed, or (2) appropriately amended ?

If you favour repeal, please suggest an alternative, with due regard to local conditions.

If you favour amendment, please state the nature of the amendment you would make.

8. Do the construction of a new *hujra* or *chauk* and a use of a building as a *hujra* or *chauk*, lead, in certain cases, to a breach of the peace ? If so, do you think the provisions of section 33 require modification in any respect ? If so, in what respect ?

9. Do blood feuds occasionally arise and lead to a series of murders or serious crimes ? If so, do you think the security provisions contained in sections 41 to 46 are necessary, or unduly severe, requiring amendment ?

Please suggest an alternative remedy if you favour repeal or radical amendment of the aforesaid sections.

10. Will you allow appeal in certain cases ? If so, in what cases ?

11. Are you in favour of revisional jurisdiction being given to the Court of the Judicial Commissioner instead of the Commissioner ?

12. Are you in favour of representation, by legal practitioner, of a person accused or proceeded against at any stage and if so what ?

13. Do you favour an express provision being made that the Council of Elders should (1) maintain a record of their proceedings, including the names of witnesses, the substance of information given by each, (2) afford to the accused or the person proceeded against, an opportunity of putting questions, (3) invariably visit the scene of occurrence, and (4) give a brief statement of reasons in support of their findings ?

14. If your answer to the preceding questions or any of them be in the negative, please give reasons and suggest any reasonable means by which the Deputy Commissioner can determine, before sentencing the accused or passing an order to his prejudice, as to whether it is safe to act upon the verdict of the Council of Elders.

15. What is the state of public opinion as regards F. C. R. ?

Is there any class of inhabitants who is, in your opinion, satisfied with the administration under the Regulation ?

What is your own feeling in the matter ?

16. Please mention cases in which, in your opinion, improper use has been made of the provisions of F. C. R.

17. Please mention cases in which, in your opinion, failure of justice has occurred in consequence of the application of the provisions of F. C. R.

In particular, please mention cases in which, in your opinion, improper use was made or failure of justice resulted from the application of the following provisions :—

(*a*) The Elders constituting the *jirga* being selected by the Deputy Commissioner for proceedings under sections 8, 11, 40 or 41.

(*b*) Civil and Criminal references to the Council of Elders, under Chapter III.

(*c*) Blockade of hostile or unfriendly tribe, under section 21.

(*d*) Liability of a community to punishment or forfeiture under sections 22, 23, 25 and 26 for connivance at the commission of an offence or at the escape of a person suspected or suppression of evidence.

(*e*) Liability of a person carrying arms in suspicious circumstances, under section 29.

(*f*) Prohibition against erection of new villages, buildings *hujras*, *chauks*, etc., or removal thereof, under sections 31 to 34.

(*g*) Liability to provide *naubati chowkidars*, under section 35.

(*h*) Power to order residence beyond North-West Frontier Province, under section 36.

(*i*) Authority to arrest, under sections 38 and 39.

(*j*) Power to order security or surveillance, under sections 40 to 46.

(*k*) Recovery of fines from relatives of persons liable, under section 56.

18. Have you any observations to make regarding the use of political *havalats* in cases arising under F. C. R. ?

Regulation IV of 1901 (Murderous Outrages Regulation).

19. Are the provisions of the general criminal law inadequate for dealing with cases of murderous outrages of the kind to which Regulation IV of 1901 applies ?

If so, are you in favour of (*a*) retention of Regulation IV of 1901 or (*b*) amendment thereof ? In case you favour amendment, in what respects would you modify its provisions ?

20. In particular, do you favour any alteration in the provisions of Regulation IV of 1901 in respect of—

(*a*) Definition of " fanatic ".

(*b*) Sentence.

(*c*) Summary procedure including record of evidence and judgment.

(*d*) Court having jurisdiction to try.

(*e*) Right of appeal.

(*f*) Representation by legal practitioner.

21. What is the state of public opinion as regards this regulation ?

Are you aware of any instances in which the provisions of this regulation were improperly used or failure of justice resulted from an application thereof ? If so, please give particulars.

Regulation IV of 1922 (Security Regulation).

Regulation IV of 1931 (Safety Regulation).

22. How far is it in the public interest or otherwise expedient, having regard to the conditions prevailing in the North-West Frontier Province, to retain or re-enact, as the case may be, the provisions of the abovenoted regulations.

23. In what respects, if any, would you modify the provisions of these regulations ?

24. Are you aware of any instances in which the aforesaid regulations were used improperly or an application thereof created widespread resentment or inflicted hardship.

Regulation VII of 1901 (Law and Justice).

25. Do you favour amendment of any part of the regulation noted above ? If so, in what respect ?

26. Have you any observations to make in reference to sections 20 to 24.

APPENDIX II.

Statistics.

TABLE No. I.

Cases of murder in the Punjab before separation, showing cis (present Punjab) and trans (presen North-West Frontier Province)-Indus figures separately, and Peshawar District.

Year.	Cis-Indus now Punjab.	Trans-Indus now North-West Frontier Province.	Total.	Peshawar District.
1861	145	108	253	..
1862	120	95	215	..
1863	110	70	180	..
1864	146	117	263	..
1865	153	136	289	..
1866	127	141	268	..
1867	137	152	289	..
1868	168	164	332	..
1869	176	164	340	..
1870	160	166	326	..
1871	154	164	318	93
1872	173	185	358	102
1873	162	153	315	77
1874	138	148	286	..
1875	142	139	281	..
1876	157	127	284	..
1877	147	138	285	..
1878	192	134	326	..
1879	158	181	339	..
1880	167	184	351	60
1881	175	151	326	56
1882	189	162	351	69
1883	171	175	346	75
1884	222	179	401	81
1885	236	229	465	99
1886	258	224	482	107
1887	297	261	558	103
1888	303	217	520	87
1889	292	172	464	55
1890	274	194	468	61
1891	304	175	479	52
1892	302	168	470	70
1893	310	170	480	66

TABLE No. II.

North-West Frontier Province cases of murder, 1901-1929.

Year.	Districts.					Total.
	Peshawar.	Kohat.	Bannu.	D. I. Khan.	Hazara.	
1901	114	35	39	10	16	214
1902	82	43	36	11	20	192
1903	90	40	22	9	19	180
1904	72	37	23	5	15	152
1905	93	48	29	7	19	196
1906	96	40	22	11	15	124
1907	114	48	19	10	16	207
1908	107	37	23	8	18	193
1909	127	67	50	25	28	297
1910	155	54	67	16	18	310
1911	149	105	65	11	27	357
1912	170	66	49	19	19	323
1913	162	67	45	16	32	322
1914	160	68	53	20	15	316
1915	145	87	66	61	35	394
1916	186	68	89	41	32	416
1917	210	43	85	35	27	400
1918	186	49	71	24	23	353
1919	222	71	81	68	32	474
1920	283	146	143	49	23	644
1921	322	122	164	49	62	719
1922	376	89	164	68	36	733
1923	347	70	97	46	24	584
1924	320	57	74	51	33	535
1925	301	73	66	40	34	514
1923	311	72	85	29	35	532
1927	258	88	115	25	28	514
1928	307	73	80	22	36	578
1929	263	97	81	15	34	490

TABLE No. III.

Districts of the Punjab returning greatest number of murders.

Year.	Districts.						
	Lahore.	Jhelum.	Amritsar.	Rawal-pindi.	Attock.	Ferozepore.	Dera Ghazi Khan.
1910	30	28	27	27	35	22	22
1912	42	32	27	37	40	34	20
1913	44	55	51	52	37	32	44
1914	37	32	42	36	24	24	29
1915	44	30	26	30	22	34	26
1916	58	28	26	23	38	30	23
1917	54	23	25	24	33	35	24
1922	53	..	41	39	60	63	...
1923	...	38	...	...	...	...	...
1924	55	41	...	...	62	55	50
1925	68	41	42	...	...	64	40
1926	56	...	45	45	...	51	35
1927	69	...	...	45	...	50	...
1928	62	...	...	37	55	60	41
1929	66	33	34	...	49	58	32

Abstracted from Punjab Police Administration Reports, which give the figures of those districts only which return the greatest number of murders.

TABLE No. IV.

Motive for murder North-West Frontier Province.

(by cases for the whole province.)

Year.	Plunder.	Relation between sexes.	Blood feuds.	Land disputes.	Other causes.	Total.
1901	..	..	..	..	..	..
1902	..	..	..	..	..	..
1903	29	55	9	..	87	180
1904	27	62	4	2	57	152
1905	23	74	15	15	69	196
1906	21	99	14	14	56	184
1907	20	85	..	9	89	207
1908	35	73	25	8	52	193
1909	69	106	42	22	58	297
1910	59	120	37	9	85	310
1911	31	158	67	23	78	357
1912	39	158	38	10	78	323
1913	46	131	46	31	68	322
1914	47	121	53	25	70	316
1915	77	135	81	25	76	394
1916	85	111	96	33	91	416
1917	62	117	59	41	121	400
1918	39	131	41	40	102	353
1919	96	149	58	36	135	474
1920	104	147	101	33	259	644
1921	121	183	210	27	178	719
1922	61	172	261	63	176	733
1923	74	202	143	54	111	584
1924	49	202	108	61	136	556 (persons).
1925	34	186	92	59	160	531 (persons).
1926	26	172	114	43	177	532
1927	17	173	114	43	167	514
1928	14	180	119	47	158	518
1929	8	169	106	61	146	490

TABLE No. V.

Motive for murder Punjab.

Year.	Plunder.	Rel. sexes.	Blood feuds.	Land disputes.	Other causes.
1901	62	184	..	..	..
1902	..	..	..	..	..
1903	..	..	..	..	..
1904	..	..	..	..	..
1905	..	..	..	..	..
1906	..	..	..	..	..
1907	..	..	..	..	..
1908	..	..	..	..	..
1909	..	..	..	..	..
1910	30	174	8	25	172
1911	..	..	..	..	..
1912	33	209	19	47	208
1913	47	262	28	66	222
1914	24	222	30	40	222
1915	41	204	29	35	203
1916	31	230	30	48	185
1917	14	195	32	53	217
1918	34	190	27	40	217
1919	24	211	19	41	214
1920	27	244	29	28	222
1921	..	..	..	..	..
1922	64	236	77	59	..
1923	50	264	60	66	..
1924	50	251	53	53	..
1925	65	219	78	55	..
1926	50	235	73	70	..
1927	25	249	48	57	..
1928	24	263	69	56	..
1929	28	268	67	28	..

TABLE No. VI.

Dacoities, North-West Frontier Province (1901—1929).

Year.	Districts.					Total.	
	Hazara.	Peshawar.	Kohat.	Bannu.	Dera Ismail Khan.		
1901	4	25	25	14	14	82	
1902	2	14	30	10	5	60	
1903	7	15	23	8	2	55	
1904	5	15	12	..	2	34	
1905	..	27	19	1	..	47	
1906	..	17	10	1	..	28	
1907	..	25	5	2	..	32	
1908	..	42	10	5	8	65	
1909	..	15	13	9	29	66	
1910	2	36	19	24	20	101	
1911	10	33	28	17	8	101	
1912	12	22	19	9	18	79	
1913	9	28	6	8	5	56	
1914	4	19	14	12	13	62	
1915	2	38	12	31	114	197	191
1916	4	95	22	53	110	284	216
1917	2	39	13	42	54	150	91
1918	..	38	9	15	30	92	49
1919	4	105	22	20	162	313	147
1920	5	121	81	123	108	438	320
1921	8	74	66	116	96	360	251
1922	8	78	42	88	99	315	120
1923	3	89	28	9	65	194	73
1924	3	22	28	7	21	81	40
1925	4	22	23	9	15	73	29
1926	..	29	32	3	10	74	15
1927	4	33	11	3	5	56	19
1928	4	24	6	5	11	43	17
1929	7	28	43	6	..	84	15

*Due to Mohmands, Mahsuds and Wazirs raiding.

†By trans-border offenders.

TABLE No. VII.

Rioting and robbery, North-West Frontier Province.

Year.	Rioting.						Robbery.
	Districts.						
	Hazara.	Peshawar.	Kohat.	Bannu.	D. I. Khan.	Total.	
1901	..	..	..	..	..	..	154
1902	..	..	..	..	..	..	132
1903	..	..	..	..	..	..	105
1904	..	..	..	..	..	..	98
1905	..	..	..	..	..	..	94
1906	..	..	..	..	..	..	77
1907	..	..	..	..	..	..	..
1908	..	..	..	..	..	..	..
1909	..	..	..	..	..	..	..
1910	..	..	..	..	..	..	..
1911	..	..	..	..	..	..	..
1912	..	..	..	..	..	..	..
1913	..	..	..	..	..	..	..
1914	..	..	..	..	..	56	..
1915	..	..	..	..	..	62	87
1916	..	..	..	..	..	..	79
1917	..	..	..	..	..	..	64
1918	..	..	..	..	..	56	112
1919	26	..	..	..	..	74	143
1920	..	..	..	..	..	92	150
1921	..	..	..	..	..	64	256
1922	25	19	11	6	4	65	274
1923	14	22	9	9	2	56	217
1924	15	9	9	18	2	53	157
1925	13	24	8	9	5	59	148
1926	14	22	6	8	5	55	40
1927	16	26	3	8	5	58	101
1928	16	11	6	11	3	47	108
1929	28	16	9	15	2	70	115

TABLE No. VIII.

Cattle theft, North-West Frontier Province.

Year.	Districts.					Total.
	Hazara.	Peshawar.	Kohat.	Bannu.	Dera Ismail Khan.	
1901	..	..	..	..	..	..
1902	..	..	..	..	..	..
1903	..	..	..	..	..	..
1904	..	..	..	..	..	..
1905	..	..	..	..	..	..
1906	..	..	..	..	..	..
1907	..	..	..	..	..	..
1908	..	..	..	..	..	21
1909	..	..	..	..	..	..
1910	..	..	..	..	..	...
1911	..	..	..	..	..	..
1912	..	..	..	..	..	...
1913	..	..	..	..	..	..
1914	..	..	..	..	..	..
1915	..	..	..	..	..	..
1916	..	..	..	..	..	120
1917	..	..	..	..	..	82
1918	..	..	..	..	..	92
1919	..	..	..	..	..	77
1920	..	..	..	..	..	180
1921	..	..	..	..	..	104
1922	..	..	..	..	..	105
1923	..	..	..	..	..	112
1924	..	..	..	..	..	92
1925	..	..	..	..	..	97
1926	..	..	..	..	Nearly ½ of total.	84
1927	4	21	6	14	35	80
1928	2	15	11	16	36	80
1929	8	80	15	17	34	94

TABLE No. IX.

Cases of murder, dacoity, robbery, rioting and cattle-theft, Punjab (1901—1929).

Year.	Murders.	Dacoity.	Robbery.	Rioting.	Cattle theft.
1901	469	68	291	468	6,383
1902	433	66	360	556	3,069
1903	440	58	336	536	2,872
1904	..	..	..	..	..
1905	396	28	220	395	2,170
1906	369	37	179	360	2,997
1907	364	24	167	344	1,946
1908	435	75	202	393	2,245
1909	421	36	179	292	2,274
1910	409	48	191	404	2,305
1911	476	100	248	434	2,391
1912	510	115	291	525	2,674
1913	685	111	316	480	2,622
1914	538	41	307	487	2,596
1915	512	264	301	457	2,425
1916	524	83	232	493	1,933
1917	511	53	167	389	1,657
1918	508	41	161	378	1,611
1919	509	130	250	453	1,761
1920	580	80	247	468	2,130
1921	697	167	420	680	2,301
1922	705	349	485	760	2,418
1923	748	333	439	757	2,182
1924	653	211	434	960	2,191
1925	627	160	460	822	2,157
1926	600	147	433	660	2,346
1927	665	149	459	797	2,951
1928	667	128	413	827	2,751
1929	679	99	434	813	2,666

TABLE No. X.

Reported serious offences, North-West Frontier Province.

District	1877	1878	1879.	1880.	1881	1882	1883.	1884	1885.	1886	1887.	1888	1889	1890	1891	1892	1893	1894	1895	1896	1897	1898
Hazara	64	102	134	83	86	84	79	107	85	111	83	158	162	122	181	150	138	153	168	200	173	178
Kohat . ..			..	65	110	118	102	87	133	70	147	189	157	102	99	98	145	114	116	130	109	121
Peshawar	130	161	101	118	187	231	277	242	285	238	301	309	204	184	139	169	131	180	178	229	272	348
D I Khan	..		17	22	44	30	41		.		68		76		95	80	79	58	84	102	68	81
Bannu .. .	65	61	60	58	60	70	74	102	62	25	147	148	131	83	108	111	124	127	115	175	139	234
Total ..	259*	324*	312*	346	477	539	523	533†	565†	518†	744	704†	730	491†	572	602	667	664	639	836	759	962

* Less Kohat

† Less Dera Ismail Khan

Sections of Indian Penal Code.

307	324-331	364	376	459
304		366	377	460
308		367	392-399	

—	1901	1902.	1903	1904.	1905	1906	1907.	1908	1909.	1910.	1911	1912.	1913	1914	1915	1916	1917	1918	1919	1920	1921	1922	1923.	1924.	1925.	1926.	1927.	1928	1929.
307	77	77	61	81	52	53	73	64	82	108	195	135	99	81	106	137	122	137	188	235	281	227	255	237	218	273	220	211	215
304, 308	49	44	54	38	60	54	51	71	68	79	93	85	74	78	82	73	82	69	43	61	74	82	77	96	88	108	77	75	91
376	21	17	10	15	18	15	17	14	15	14	20	16	24	22	22	26	19	27	31	24	33	38	47	38	40	43	31	35	33
377 .	31	22	39	46	41	29	35	36	19	38	43	48	42	22	33	50	55	49	51	50	49	59	68	65	63	70	59	69	68
329, 331, 333	3	2	1	1	406 (329, 331, 333; 325, 326, 335)	360	393	377	416	420	476	457	429	379	356	396	331	330	339	353	360	336	437	371	421	478	484	523	488
325, 326, 335	395	389	426	412																									
323 .	25	21	20	19	16	12	8	10	15	5	16	10	10	6	10	4	8	5	9	4	6	8	14	8	9	18	10	10	14
363-369	42	21	24	24	25*	22	37	34	65	37	58	61	66	39	70	80	65	58	107	125	146	94	120	120	113	87	123	136	133
395, 397, 398	70	57	48	44	64 (395, 397, 398; 399, 402)	44	53	85	75	120	89	94	63	82	258	161	215	101	471	499	428	255	170	51	50	58	52	41	53
399, 402 . .	1	5	.	6																									
394 . .	28	14	14	15	50 (394; 392, 393)	45	42	50	51	75	68	81	107	108	93	100	123	140	186	233	304	302	219	185	170	188	142	157	169
392, 393 . .	75	71	46	46																									
454, 455, 460 .	1,021	950	779	793	890†	816	964	1,093	1,011	1,088	1,260	1,148	1,478	1,026	1,057	1,053	1,157	1,418	1,613	1,530	1,767	1,329	1,527	1,434	1,408	1,244	1,276	1,221	1,301
Total .	1,745	1,676	1,522	1,540	1,622	1,438	1,677	1,834	1,817	1,984	2,387	2,133	2,395	1,858	2,037	2,180	2,177	2,332	3,038	3,114	3,447	2,730	2,964	2,604	2,558	2,545	2,425	2,478	2,586

* From 1905 includes 372, 373 and 371.

† Includes 449-452 from 1905.

TABLE No. XII.

Case of dacoity per 10,000.

Year.	North West Frontier Province.	Punjab.
1901	·34	·028
1902	·25	·028
1903	·22	·024
1904	·14	?
1905	·15	·012
1906	·11	·016
1907	·13	·010
1908	·27	·032
1909	·27	·016
1910	·42	·020
1911	·42	·042
1912	·32	·049
1913	·23	·047
1914	·25	·046
1915	·81	·112
1916	1·81	·035
1917	·62	·022
1918	·38	·017
1919	1·25	·055
1920	1·81	·034
1921	1·49	·070
1922	1·30	·148
1923	·80	·140
1924	·33	·089
1925	·30	·068
1926	·30	·062
1927	·22	·063
1928	·18	·054
1929	·35	·042

TABLE No. XIII.

Cases of robbery per 10,000.

Year.	North-West Frontier Province.	Punjab.
1901	·63	·12
1902	·54	·15
1903	·43	·14
1904	·40	..
1905	·38	·09
1906	·31	·07
1907	..	·07
1908	..	·08
1909	..	·07
1910	..	·08
1911	..	·10
1912	..	·12
1913	..	·13
1914	..	·13
1915	·35	·12
1916	·32	·09
1917	·27	·07
1918	·46	·06
1919	·50	·10
1920	·61	·10
1921	1·0	·17
1922	1·13	·20
1923	·89	·18
1924	·64	·14
1925	·61	·19
1926	·45	·18
1927	·41	·19
1928	·44	·13
1929	·47	·18

TABLE No. XIV.

Cases of rioting per 10,000.

Year.	North-West Frontier Province.	Punjab.
1901	..	·19
1902	..	·23
1903	..	·22
1904	..	..
1905	..	·16
1906	..	·15
1907	..	·14
1908	..	·16
1909	..	·12
1910	..	·17
1911	..	·18
1912	..	·22
1913	..	·20
1914	·23	·20
1915	·25	·19
1916	..	·20
1917	..	·16
1918	·23	·16
1919	·30	·19
1920	·38	·19
1921	·26	·28
1922	·26	·32
1923	·23	·32
1924	·21	·4
1925	·24	·34
1926	·22	·28
1927	·23	·33
1928	·19	·35
1929	·28	·34

TABLE No. XV.

Cases of cattle theft per 10,000.

Year.	North-West Frontier Province.	Punjab.
1901	..	2·70
1902	..	1·29
1903	..	1·22
1904	..	..
1905	..	0·92
1906	..	0·87
1907	..	0·82
1908	·08	0·92
1909	..	0·92
1910	..	0·98
1911	..	1·01
1912	..	1·13
1913	..	1·11
1914	..	1·10
1915	..	1·02
1916	0·57	0·82
1917	0·33	0·69
1918	0·37	0·60
1919	0·31	0·75
1920	0·74	0·89
1921	0·42	0·97
1922	0·43	1·02
1923	0·46	0·90
1924	0·38	0·92
1925	0·40	0·91
1926	0·34	0·99
1927	0·33	1·25
1928	0·33	1·16
1929	0·38	1·13

TABLE No. XVI.

Number of cases referred to Jirga: convicted and percentage of convicted to referred cases, North-West Frontier Province

Year.	Hazara.			Peshawar			Kohat			Bannu			D. I Khan			Total.		
	Referred.	Committed	percentage.	Referred.	Committed	Percentage	Referred.	Committed.	Percentage.	Referred	Committed	Percentage	Referred	Committed	Percentage	Referred	Committed	Percentage
1906 .	.	.														132	71	
1907 ..	.		.													128	79	
1908	17	12	71	119	68	57	38	20	53	11	8	73	12	12	100	197	120	61
1909 .	19	10	53	82	43	52	79	38	48	40	17	43	17	11	65	237	119	50
1910 .	27	10	37	122	50	41	64	34	53	72	40	56	20	17	85	305	151	50
1911 .	31	21	68	131	79	60	125	85	68	92	49	53	22	11	50	401	245	61
1912 .	.															331	194	58
1913 .	49	20	40	158	98	62	69	45	65	52	24	46	24	10	41	352	197	56
1914	52	32	61 5	211	147	69 6	63	43	68 2	58	29	50	11	7	63 6	396	258	65·3
1915	40	23	57 5	142	101	71·1	118	104	88·1	82	46	56	29	22	75 8	411	296	72
1916	26	17	65 3	200	114	57	72	63	87·5	109	76	69·7	33	27	81·8	440	297	67·5
1917 ..	21	13	61 9	224	139	62	55	38	69	90	61	67 7	25	22	88	415	273	65 7
1918	22	15	68·1	185	116	62 7	44	30	68·1	85	68	80·0	13	7	53 8	349	236	67 6
1919 .	28	19	67 8	183	98	53·5	53	38	71 7	85	57	67 0	26	11	42 3	375	223	49 4
1920 .	58	20	34 4	320	128	40 4	55	29	52 7	92	41	44 5	24	18	75 0	549	236	42 9
1921 .	97	84	86·5	315	174	55 2	115	80	69 5	90	46	51 1	84	33	70 2	664	417	62 8
1922	44	38	86·3	269	146	54·2	94	78	82·9	112	68	60 7	15	12	80 0	534	342	64·0
1923 .	21	9	42·8	178	109	61 2	34	20	76·4	54	36	66 6	16	18	75 0	313	192	64·4
1924 ..	58	35	60 3	331	171	51 6	30	28	93 3	67	37	55 2	33	11	33 3	519	282	54 3
1925 .	52	32	61 5	315	166	52·6	45	26	57·7	64	31	48 4	51	30	58 8	527	285	54·0
1926	33	18	54·5	258	145	56·2	37	30	81 0	47	26	55·3	31	17	54 8	406	236	58·1
1927 ..	67	43	64·1	264	167	63·2	55	44	80	53	36	67 9	15	7	46 6	454	297	65·4
1928 ..	35	16	45·7	260	169	65·0	51	40	78·4	30	16	53·3	20	9	45·0	396	250	63·1
1929 ..	39	24	61 5	208	129	62·0	100	75	75·0	77	42	54 5	15	6	40·0	439	276	62·8

NOTE.—Figures previous to 1906 not available.

TABLE No XVII

Fines under section 22 Frontier Crimes Regulation, North-West Frontier Province

Year	Hazara		Peshawar		Kohat		Bannu		Dera Ismail Khan		Toatal.	
	No.	Amount	No.	Amount	No	Amount	No	Amount	No	Amount	No	Amount.
		Rs		Rs		Rs		Rs		Rs		Rs
1908 ..	1	1,000	6	8,000	6	2,100	10	14.230	1	3,000	24	28,330
1909	3	418	6	9,298	7	6,977	3	3,320	1	300	20	20,213
1910 ..	6	8,100	13	19,897	7	2,350	4	5,159	4	2,844	34	38,350
1911 . .	3	1,400	2	700	5	2,400	3	2,235			13	6,735
1912 .	2	150			9	2,460	6	4,210	4	3,030	21	9,850
1913 .	2	471	3	1,040	4	2,250	4	750	3	2,200	16	6,711
1914 .			9	4,480	4	4,631	4	8,515	7	4,470	24	22,024
1915 ..	4	1,581	4	2,972	6	1,755	2	4,150	5	2,409	21	12,867
1916 ..	4	2,046	8	13,512	10	6,060	8	3,777	17	17,600	47	42,995
1917 .	2	1,410	26	17,363	2	3,500	8	2,915	4	942	42	26,130
1918 .	1	660	8	10,110	1	450	9	3,450	1	300	20	14,970
1919 . .	3	4,855	12	38,701	12	7,242	2	2,700	3	4,100	32	57,598
1920 .. .	2	537	1	1,500	12	11,929	4	1,990	2	6,000	21	21,958
1921 ..	4	350	3	4,500	5	2,800	13	16,150	1	80	26	23,880
1922 .. .	3	2,625	4	5,373	22	15,653	7	1,750		.	36	25,301
1923 .. .	2	1,180			2	1,366	5	5,671		.	9	8,217
1924 . .	4	2,946	3	1,588	2	900	6	7,237	1	500	16	13,171
1925 .. .	3	1,700	5	5,320	1	2,000	7	2,574	1	2,000	17	13,594
1926 . .	2	1,430	10	7,883	4	1,990	..		6	12,836	22	24,140
1927 . .	2	698	4	3,775	9	3,500	2	800	.	.	17	8,773
1928 .. .	3	1,784	6	5,108	12	4,010	3	1,300	.		24	12,202
1929	3	2,005	6	6,596	4	3,229	7	2,854	..		20	14,684

Figures previous to 1908 not available.

TABLE No. XVIII.

Out-laws in tribal territory.

Year.	Wanted in				
	Peshawar.*	Kohat.	Bannu.**	Dera Ismail Khan.	Hazara.
1919	473	328	329	..	22
1921	539	458	577	..	33
1925	511	408	552	..	77
1926	642	387	533	21	83
1927	477	298	385	13	82
1929	522	239	228	20	60
1930	536	244	226	18	58
	* Includes following residents of tribal territory outlawed for offences in British territory.		** Includes following residents of tribal territory outlawed for offences in British territory.		
1919	278	..	284	..	..
1921	301	..	284	..	..
1925	257	..	345	..	..
1926	288	..	389	..	..
1927	248	..	259	..	..
1929	275	..	139	..	..
1930	289	..	138	..	..

Outlaws known to Political Agents to be in tribal territory.

Year.	Khyber Agency.	Kurram Agency.	Remarks.
1919	..	4	Others not received.
1921	..	9	
1925	34	14	
1926	48	23	
1927	56	33	
1929	73	34	
1930	84	27	

APPENDIX III.

Twenty-five selected précis of typical cases dealt with under the Frontier Crimes Regulation and copies of statements dealing with the Political Havalat.

Précis No. 1.

Case No. 115/2, 1925.

VILLAGE SHAH MANSUR, MARDAN.

Crown versus *Abdul Shakur Accused.*

Section 302.

On 27th September 1925 at about 11 A.M. Abdul Ghafar, a resident of Shah Mansur, was stabbed and died immediately. There were several injuries on the body. At 2 P.M. on the same day Abdul Shakur, his brother, reported at the Thana that the deceased had picked a quarrel with one Shahzaman and had been killed by him. On 29th September 1925 Musamat Bibi Khanam, the widow of the deceased charged Abdul Shakur, Abdul Hamid and Ajab, an absconder, all three brothers, with the murder of her deceased husband. On 12th October 1925 Abdul Shakur made a statement before the Magistrate that his deceased brother Abdul Ghafar was killed by Ajab the absconder, who was carrying on with Musamat Bibi Khanam during the absence of the deceased. It may be noted that the deceased had been away in the Punjab and other places, for a period of 14 years and had returned to his village 5 months before his murder. The Police believed the story of the woman and alleged that the three accused were enjoying the profits of the land belonging to the deceased during his absence and that they had killed him because they wanted to inherit his property. Abdul Shakur and Abdul Hamid were therefore placed for an enquiry before a Magistrate. The Magistrate in his order said that there were no eye witnesses and there was no judicial proof as to who had killed Abdul Ghafar and therefore there was no possibility of conviction by a regular Court. He asked the District Magistrate to refer the innocence or guilt of Abdul Shakur, Abdul Hamid and Ajab to the decision of a jirga, but, at the same time, remarked that in his opinion Musamat Bibi Khanam, the widow of the deceased, was carrying on with Ajab and her case should also be placed before the jirga. On 12th December 1925 the District Magistrate examined Musamat Bibi Khanam, who stated that her deceased husband had been away from the village for 14 years and that she had been living in her own village with her own brother during the absence of her husband. The Deputy Commissioner thought that this statement was of significance and invited the attention of the members of the Jirga to it. Four members of the Jirga were appointed, namely, Mohammad Akbar Khan, Ghulam Haider Khan, Pandal Khan and Ibrahim Khan. The innocence or guilt of Abdul Shakur, Abdul Hamid, Ajab the absconder, and Musamat Bibi Khanam was enquired into by the Jirga. The prosecution witnesses supported the story of Musamat Bibi Khanam to the effect that the deceased had been killed by Abdul Shakur, Abdul Hamid and Ajab. In their defence Abdul Shakur and Abdul Hamid produced four witnesses, Nabib Ullah, Sharif, Rahmat-Ullah and Wahid-Ullah. Nabib Ullah stated that he was prepared to swear that Abdul Shakur and Abdul Hamid were innocent and that Musamat Bibi Khanam was carrying on with Ajab who had killed the deceased. Sharif, Rahmat Ullah and Wahid Ullah in one statement proclaimed the innocence of Abdul Shakur and Abdul Hamid and stated that the woman Musamat Bibi Khanam was at the bottom of it and that she and Ajab had conspired together to kill Abdul Ghafar. The jirga on 7th January 1926 found Musamat Bibi Khanam and Ajab guilty of the murder of Abdul Ghafar. They were of opinion that Abdul Shakur and Abdul Hamid were not guilty. On 8th January 1926 the District Magistrate after accepting the verdict of the Jirga convicted Musamat Bibi Khanam under Section 302, Indian Penal Code and sentenced her to 10 years rigorous imprisonment and sent up the file to the Chief Commissioner for confirmation of sentence. The sentence was confirmed by the Chief Commissioner, the Hon'ble Mr. Keene, on 27th January 1926. The application for revision on behalf of Musamat Khanam was also rejected.

Ajab was subsequently tried and sentenced to death by the Sessions Judge who held that Musamat Bibi Khanam had been convicted on false evidence, that the real motive of the murder was as had been alleged by her, and that there was no foundation for the story that she was intriguing with Ajab. The Sessions Judge accordingly wrote the letter reproduced below which secured the release of the woman :—

Substance of letter No. 513, dated 30th March 1927, from Lieutenant-Colonel W. A. Garstin Sessions Judge, Peshawar, to the Secretary to the Hon'ble the Chief Commissioner, North-West Frontier Province, Peshawar.

In this letter the Sessions Judge says that the case Crown *versus* Ajab was completed on 2nd March, 1927, with the result that Ajab was sentenced to be hanged. The sentence of death was confirmed by the Court of the Judicial Commissioner on 24th March 1927. The Sessions Judge recommended that the petition of Musamat Bibi Khanam, widow of Abdul Ghafar, should be granted and her sentence remitted as she is found to be innocent. The Sessions Judge remarks that it would be seen from his judgment that he was of opinion that the grounds on which the Council of Elders held Musamat Bibi Khanam to be guilty were entirely without foundation and that the motive for the murder was a dispute between the brothers over their lands. The Court of the Commissioner upheld this view and agreed with the Sessions Judge about the motive

for the crime. During the course of Ajab's trial the question of the guilt of Musamat Bibi Khanam came in to prominence and the trial of Ajab showed that she was in no way connected with the murder. The Sessions Judge and the Assessors had the opportunity of seeing and hearing the compurgators who swore before the Council of Elders of the complicity of Musamat Bibi Khanam in the murder but the Assessors before the Court of Session were positively of opinion that Musamat Bibi Khanam had been convicted on false evidence. Musamat Bibi Khanam was pregnant when she was convicted by the Deputy Commissioner. She gave birth to a child when in jail.

In these circumstances the Sessions Judge was of opinion that there has been a serious miscarriage of justice in the conviction of Musamat Bibi Khanam and recommended strongly that her sentence should be remitted under Section 401 of the Criminal Procedure Code.

It appears that the sentence was subsequently remitted by the Hon'ble the Chief Commissioner.

Précis No. 2.

POLICE STATION KALLU KHAN, MARDAN.

Crown versus *Hamid Ullah, Hazrat Ullah Khan Zaida, Said Hussain, Mir Zaman and Rahim Ullah.*

Under Section 302.

One Amir Ghorh was killed on 11th March 1921.

It was alleged that the deceased had a liaison with the wife of Hamid Ullah, a woman of very bad character. The case was enquired into by Rai Sahib Hukam Chand, Magistrate first class, who in his order says that there were no eye-witnesses and no judicial proof for the conviction of the accused. The order of the Magistrate is dated the 14th September, 1921. He, however, asked the Additional District Magistrate of Mardan what to do in the case, whether he should refer it to the jirga or discharge the accused. The additional District Magistrate of Mardan advised him to discharge the accused ; consequently all the accused persons * * * were discharged. The police was not satisfied with the order of discharge and made an application to the Deputy Commissioner praying that the case should be referred to a jirga. The Deputy Commissioner on 3rd January 1922 referred the case of all the accused persons to a jirga, remarking that as the cause of murder appears to be the misbehaviour of a woman and the honour and shame of a Pathan were involved the innocence or guilt of the accused persons should be referred to a jirga in accordance with the recent orders of the Chief Commissioner.

The jirga found that there was no evidence in the case and none was produced by the prosecution. They, however, held, on the statement of the Lambardar, that the deceased was killed by Hamid Ullah, Mir Zaman, Said Hussain and Rahim Ullah and found them guilty of the murder of Amir Ghorh. They also said that Shah Dad, an absconder, was also guilty. They recommended to the Deputy Commissioner that each of the guilty persons should be sentenced to 5 years' rigorous imprisonment and to a fine of Rs. 100 each, half to be paid to the complainant. The Deputy Commissioner accepted the findings of jirga and sentenced Hamid Ullah, Mir Zaman, Said Hussain and Rahim Ullah each to five years and to a fine of Rs. 100 under Section 302. His order is dated the 28th February 1922.

Shah Dad the absconder was subsequently arrested and placed on trial before another jirga. This jirga found Shah Dad not guilty. The Deputy Commissioner accepted the findings of the Jirga and discharged Shah Dad. On 9th July 1922 the Chief Commissioner on the application of Hamid Ullah, Mir Zaman, Said Hussain and Rahim Ullah ordered their re-trial by a second jirga. The result was that all the accused persons were discharged by the second Jirga. They however recommended that a fine of Rs. 1,000 should be inflicted on the inhabitants of the village. On 1st November 1922 the Deputy Commissioner accepted the findings of the jirga and discharged all the accused but refused to impose a fine on the inhabitants of the village.

Précis No. 3.

PESHAWAR DISTRICT.

Crown through Sher Mohammad Khan, resident Agra Payan

Versus

Abdul Malik, Nur Malik and Shah Zamir residents of Agra.

Section 302, I. P. C.

The first Jirga consisted of—

(1) Arbab Gul Mohammad Khan of Amba-Dher,

(2) Latif Khan of Nisatha,

(3) Khan Bahadur Mohammad Yusuf Khan of Dheri-Zardad,

(4) Azam Khan,

(5) Abdul Rahim Khan.

This jirga found the three accused guilty and after conviction they were sentenced as follows :—

(1) Abdul Malik to 14 years' imprisonment.

(2) Shah Zamir to 5 years' imprisonment.

(3) Nur Malik being a minor was fined Rs. 1,500 only or in default was to undergo simple imprisonment for 18 months.

After the conviction it was brought to the notice of the Resident in Waziristan and Commissioner that the only witness against the three accused was Khurshida, the widow of the deceased Khan Mohammad. She subsequently went to the Tribal Territory in order to marry Rahim Ullah an oultlaw (a cousin of Khan Mohammad deceased). Throughout the enquiry of the case all the three accused had represented that Rahim Ullah had murdered Khan Mohammad on account of his liaison with the widow of the deceased. Later on Khurshida's marriage with Rahim-Ullah threw a strong light on the real facts of the case. The Resident in Waziristan therefore asked the Deputy Commissioner, Peshawar, to institute another jirga in order to find out how far the three accused were responsible for the murder of Khan Mohammad. The Deputy Commissioner's report to the Resident in Waziristan shows that Rahim-Ullah together with his wife Khurshida was arrested at his father's house on 17th May 1921 in connection with a previous murder of one Yusuf.

The finding of the second jirga is not on this file. However it is clear from another file that all the three accused convicted by the first jirga were released by the second jirga, the members of which were selected from another Tahsil in accordance with the wishes of the Resident in Waziristan.

Précis No. 4.

PESHAWAR DISTRICT.

Crown through Haider deceased of Pushti Khara Bala

Versus

1. Said Ahmad, 2. Hasham and Umra Khan of Pushti Khara Bala.

CHARGE UNDER SECTION 302, I. P. C. FOR THE MURDER OF HAIDER.

Facts.—Haider deceased was shot through the chest with a rifle on the evening of 13th August 1926 and died at 1-30 on the same night. Aziz Khan, uncle of the deceased, was called by telephone from Peshawar. He made a report of the murder at Police station Burj Hari Singh at about 6-A.M. on the following morning and accused 1. Mohommed Umar Khan, 2. Sarwar Khan, 3. Aslam Khan, 4. Gul Rahman and 5. Farid of the murder.

The Sub-Inspector went to the spot and after investigation arrested the 3 accused named above, and reported that the persons named by deceased's relatives were falsely named by them on account of enmity. Hasham and Said Ahmad accused are close relatives of the deceased. Enmity of a serious nature admittedly existed between the deceased and his relatives and Mohommed Umar Khan and the other 4 accused.

All the principle witnesses were disbelieved by the magistrate as having come forward to make statements before the police 4 days after the deceased's murder, and there was no circumstantial proof to connect the accused with the murder. Thus the verdict of guilty against the accused by the Council of Elders was based on mere surmise, and this finding was against every principle of justice and equity.

The Deputy Commissioner agreeing with the finding of the jirga sentenced 1. Said Ahmad and 2. Hasham to 14 years rigorous imprisonment each and submitted the case to the Chief Commissioner for confirmation of the sentences.

The Chief Commissioner refused to confirm the sentences, but referred the case back to the Deputy Commissioner for a second trial by a second jirga, the members of which he appears to have selected himself *viz* :—1. Nawab of Hoti, 2. Nawab of Tank, 3. Khan of Zaida, 4. Arbab Mohammad Akram Khan of Landi, 5. Khan Bahadur Maulvi Ghulam Hassan Khan, 6. Sheikh Khuda Bakhsh retired Extra Assistant Commissioner.

The 2nd jirga made an elaborate enquiry, visited the spot, and took local evidence. They came to the conclusion that the case against all the three accused was false. The jirga also came to the conclusion that the Sub-Inspector's investigation was perverse and that he had been bribed.

The jirga in their verdict expressed the following principle which they said they followed in coming to a decision in favour of the accused :—

" We take the liberty of respectfully stating that even the Regulation under which cases are referred to jirgas must be regarded as based on equitable principles of justice, and cannot be presumed to aim at arbitrary convictions of the accused without

proof of their guilt. The opinion of the jirga must be based on substantial proof and not on mere surmise. The proof should be such that it may incline a reasonable person to the belief that a certain fact exists, or does not exist. We have adopted this principle in coming to the verdict indicated above."

The Deputy Commissioner accepted the finding of the second jirga and discharged all the three accused.

Remarks.—The first jirga found innocent persons guilty of murder on mere surmise and without proof. The Deputy Commissioner sentenced two persons to 14 years' rigorous imprisonment including 3 months solitary confinement each. Had the case not gone up to the Chief Commissioner for confirmation of sentences, 2 innocent persons would have suffered rigorous imprisonment to 14 years. The second jirga enumerated a principle of justice which they followed and they found the accused not guilty. The Deputy Commissioner accepted that verdict including the principle enunciated by the 2nd jirga.

Précis No. 5.

Case No. 28/2 of 1926.

PESHAWAR DISTRICT.

Crown through Shahbaz versus *Musamat Rakhima and others.*

CHARGED UNDER SECTION 302, I. P. C.

Musamat Rakhima, widow of Shahbaz, deceased, and Abdul Rahman were sent up for trial under Section 302, Indian Penal Code on a charge of murdering, by poison, Shahbaz of village Kalu Khan. The medical evidence clearly proved that the death was due to poisoning. It seemed that Musamat Rakhima was a woman of bad character. She did not like her husband who apparently was an ugly man of poor physique. Abdul Rahman was suspected of having abetted her in the crime because he was one of her lovers. The jirga members were of the opinion that one or other of her lovers must have been her accomplice in the crime. The jirga, however, found that Musamat Rakhima, was guilty and that there was not sufficient proof against Abdul Rahman. The Deputy Commissioner in his order dated 28th June 1926, agreeing with the finding of the jirga, convicted Musamat Rakhima under Section 302, Indian Penal Code and sentenced her to 14 years' rigorous imprisonment. The sentence was confirmed by the Hon'ble Mr. W. J. Keene on 9th July 1926. An application for revision was rejected by the Hon'ble the Chief Commissioner on 23rd September 1926.

The Magistrate who tried the case, in the first instance, in his order dated 7th June 1926 says " there is no evidence against the accused other than that Musamat Rakhima is a faithless woman and has many paramours ; that Abdul Rahman, accused, gave bail on her behalf during the Police investigations ; and that the house of Musamat Awal Jan sister of Abdul Rahman accused is situated close to that of the deceased and both the accused used to go there and visit each other ".

The jirga members convicted Musamat Rakhima on the statement of Malik Iliyas Khan of Kalu Khan, who stated that Musamat Rakhima was guilty. It is to be noted that Malik Iliyas Khan's evidence was based on surmise.

Precis No. 6.

Case No. 113/2.

GENERAL REGISTER No. 2550 OF 1929.

K. E. V. Abdul Hamid.

PESHAWAR DISTRICT.

Case under Section 11, F. C. R.—Offence under Section 302, I. P. C.

Bazai, a water carrier, was shot dead at mid-night. One Abdul Hamid was suspected, as he was believed to have had intimacy with the deceased's wife. The wife repudiated the suggestion. S. I. Sahib Singh investigated the case and challaned Abdul Hamid who, it should be mentioned, had been previously bound over to be of good behaviour under Section 110, C. P. C. There was no evidence of any kind in the case, and the accused was admitted to bail. The Magistrate recommended that the D. C. should make a reference to Jirga. The D. C. in an order, dated 15th February 1929 said " there is no direct evidence in the case as to by whom the murder was committed, but there is a motive against the accused and against no one else, and it is obvious that public opinion regards Abdul Hamid as the murderer". In those circumstances, a reference was made to a jirga consisting of 4 persons residing in different villages.

The jirga noted their finding that four of the prosecution witnesses who had deposed in favour of the prosecution made discrepant statements before the jirga. They named 3 other prosecution witnesses, who definitely supported the accused. They referred to 2 witnesses, including the sub-inspector, who supported the case for the prosecution, not of course by giving

relevant evidence as to the crime itself. The jirga then proceeded to consider the defence and held that the defence was not credible and had been concocted. They noted the fact that they had visited the spot and made further enquiries but that the Lambardars did not appear before them. They observed as follows:—

"No one gave any evidence against the accused but no one has named any other man as the murderer of the deceased. The reasons for which no one gave evidence against the accused is that the deceased was a poor man. The accused who is on bail, is a badmash and every-body thought that he would get off and become their enemy. Our enquiries made from the people of adjacent villages and the facts of the case clearly show that the motive stated by the police is absolutely correct. The accused was a lover of Musamat Sabrai, wife of the deceased, for which the deceased quitted his village Pushtkhara Bala and went to Sarband, which enraged the accused. Moreover, Sir Nawab Saheb has also written on the guilt of the accused. We therefore see no reason why we should not hold the accused guilty for the offence. The Lambardars of both the Push'i Khara villages are very idle and do not disclose the real facts in the matter for which many cases go untraced, as reported by the Magistrate Ilaqa."

The accused absconded sometime before the jirga recorded their finding though he was present up to the stage when he made his own statement. On the finding of guilt returned by the jirga, the D. C. noted that as "there is no chance of arresting the accused, the case be consigned to the record room" warrants under Sections 87 and 88 were issued.

The trend of the D. C.'s order shows that he would have taken the same view of the case as the jirga had done and would in all probability have convicted if the accused had not absconded.

Précis No. 7.

CHARSADDA

Crown (through Sahahzadamir deceased)

Versus

1. Mohommed Hussain.

2. Gul Hassan.

3. Zain-ud-Din.

4. Miran Said (outlaw).

SECTION 302, I. P. C.

This case relates to the murder by stabbing of one Shahzadmir aged 22 on the 3rd August 1926 in the village "Hujra". The first information report was made on the same day by Sher Baz, uncle of the deceased, charging the above-mentioned 4 accused. It is alleged that the murder was due to an intrigue between the deceased and Badri, wife of accused No. 1. Miran Said accused No. 4 absconded and the other three were challaned in due course. Soon after the occurrence on the 3rd August, *i.e.*, on the night of 5/6th August 1926, four members of the accused family and party *viz.*, 1. Mohommed Asim 2. Mohommed Nasim, 3. Gul Nasim and 4. Sher Hassan were brutally murdered in retaliation.

No direct evidence was forthcoming in the case. Sher Baz, uncle of the deceased, states that he was lying asleep when his nephew, Lal Bahadur (aged 10), came and informed him that the deceased had been murdered by the accused. The case was referred to a Jirga under orders of the D. C. dated 13th October 1926.

Jirga finding dated 12th December 1926.—The cause of the murder is stated to be that the deceased had unlawful friendship with either the sister or the mother of Miran Said (Accused No. 4) who, when sleeping with the deceased in the "Hujra" on the night of the occurrence, killed him. From open and secret enquiries we have come to the conclusion that accused Nos. 1, 2 and 3 are innocent and that Miran Said only is guilty.

The D. C. in his order dated 9th March 1927 agreed with the finding of the Jirga.

NOTE.—It would be interesting to note that in the F. I. R. it was alleged that the deceased had illicit connection with the wife of accused No. 1. Subsequently the *Jirga* shoved the whole blame on the shoulders of accused No. 4 who had absconded and his sister or mother was brought into the show.

Précis No. 8.

Case No. 59/22 of 1930.

Crown versus *Aziz Khan and Sharifullah.*

CHARGE UNDER SECTION 302, I. P. C.

Ram Chand was killed by gunshots at 2 A.M. on 12th October 1929 at his house. A report was made the same day at 6-30 A.M. The wife of the deceased complained that she was awakened by the shot and found her husband dead. She suspected Sharifullah, alleging that he had made overtures. On the following day Aziz Khan was charged, and the motive of dispute was alleged to be that he had cut maize belonging to the deceased. The Police committed Aziz Khan and Sharifullah, charging the former in column No. 1 and the latter in column No. 2.

The Magistrate suggested that the case be referred to a Jirga. The Deputy Commissioner found that Aziz was generally suspected to be the culprit and the quarrel took place on cutting the maize. He referred the following two questions to the Jirga :—

(1) Did Aziz murder Ram Chand by shooting ?

(2) Did Sharifullah abet the murderer ?

The Jirga consisted of 2 Hindus and 2 Muslims. The Jirga remarked that all the respectable persons declared that Aziz committed the crime and that Sharifullah was innocent. The defence witnesses were ordinary men and not worthy of any trust. Besides, they did not suggest the name of any other person if Aziz was not the murderer. The Jirga recommended 10 years for Aziz and acquittal for Sharif. The Deputy Commissioner upheld the finding of the Jirgah and the Commissioner could find no reason to interfere.

Précis No. 9.

Case No. 103/20/1921.

BANNU.

Crown through Mussammat Khair Bibi, wife of Faujdar Khan, Wazir Daddi Khel of Mian Dad

Versus

1. *Juma Gul, son of Gul Ghaza.* 2. *Jan Mohammad, son of Khan Gul.* 3. *Rajan, son of Dagan.* 4. *Sahib Gul, son of Khair Din.* 5. *Aman Gul, son of Said Gul. Caste Wazirs Dadi Khel of Gul Ghazan Khan.*

CHARGE UNDER SECTION 302, I. P. C.

Murder of Mussammat Khair Bibi.

On the night of the 11/12th July 1921, Musummat Khair Bibi, the wife of Faujdar Khan a Dadi Khel Hathi Khel of Miandad Dakhli Karlosta, Police Station Domel was shot dead, while laying asleep, by certain unknown persons. None of the offenders were seen. The deceased's husban Faujdar and his bother Gulmir were both away at the time. The Police investigation led to the arrest and prosecution of the above five named accused persons before the Assistant Commissioner and the Magistrate 1st Class who by his order, dated 8th August 1921 recommended the case to be referred to a Council of Elders, as there was no judicial proof.

The Council of Elders unanimously found all the 5 persons guilty of the murder of Musammat Khair Bibi, but that as matter of fact they shot the deceased by mistake for her husband's brother Gulmir as she was lying on a charpoy under a man's sheet. The motive for the murder they find to have been the prosecution of a blood fued. This blood fued came before the court in connection with the repatriation of outlaws, *vide* case K. E. through Saleh Khan *versus* Gul-Mir and 2 others. In that case Saleh Khan, brother of Juma Gul, accused No. 1 in the present case, was murdered by Gul Mir on account of an intrigue with Gul Mir's wife Musamat Moghal Khela, and in persuance of the fued Rahim Gul a relative of Saleh Khan was also murdered in Tribal Territory. It was in revenge for these two murders that the deceased was shot by mistake for Gul Mir. Accepting the Council's finding the D. C. held all the five accused to be guilty of murder under Section 302, I. P. C. The Council made no recommendation for leniency but the Deputy Commissioner in the circumtances of the case and with the view to avoid further intensifying the fued ordered each accused to pay a fine of Rs. 200 or in default five years R. I. Out of the fine when recovered Rs. 500 was to be paid to Faujdar Khan, husband of Mussammat Khair Bibi as compensation for her. The order of the Deputy Commissioner is dated 23rd November 1921.

NOTE.—Any one of the five might have committed the murder but all were convicted apparently because it was impossible to say who actually committed the murder.

Précis No. 10.

Case No. 80 of 1921.

KOHAT.

Crown versus *Kala Din, son of Rustam, Afghan of village Sheikhan, Kohat District.*

CHARGE UNDER SECTION 379, I. P. C.

On the night of October 19/20th 1920, a mare and a pony were stolen from Bungalows Nos. 31 and 32 Kohat Cantonment. The animals were owned by two Military Officers of the station and were worth Rs. 400. Four Lambardars of village Sheikhan stated to the Police that Kala Din of their village was the offender. The Sub-Inspector however, sent up a final report and recommended the case to be filed. The evidence of four Lambardars and two Sub-Inspectors Mohammad Usman and Abdul Hai was taken and the judicial proof being *nil* the case was referred by the Additional District Magistrate under Section 11(1), F. C. R., to a jirga.

The accused and Akbar Shah, outlaw, were fast friends and they were said to have stolen the two horses. Akbar Shah was dead.

Akbar Shah was betrothed to a girl at Sheikhan. The girl's mother was a widow. Kala Din at the time lived with the widow and thus made the acquaintance of Akbar Shah when he came to visit his mother-in-law in secret. The girl in question was promised in marriage to a brother of Kala Din.

The Lambardars of Sheikhan stated that the accused had been suspected in three thefts of cattle in their village. A syce from Kohat Cantonment was seen by some of them to have gone to Sheikhan and to have talked with him privately. The identity of the syce has not been established but this much was known that he was a resident of the Chhachh tract and was employed in Kohat Cantonment. It was surmised that the syce had been of some use in the theft of the two horses and wanted payment for the part played by him.

The accused objected to the jirga finding because they had not sworn the Lambardars of Sheikhan on the Quran.

The A. D. M. accepted the award of the jirga and sentenced him to undergo R. I. for a term of 1½ years including three months solitary confinement.

The order of the A. D. M. is dated 8th September 1921.

The application of revision was rejected by the C. C. on 14th December 1921.

The jirga went through the police Zimnis and the judicial file and heard the accused and the witnesses for the prosecution and defence. They also made public and secret enquiries. They say that—

1. " though there is no ocular evidence as to the guilt of the accused yet the evidence of village Lambardars as well as the circumstantial evidence and the Police investigation leave no room for doubt in respect of the criminality of the accused and it is certain that in this case he is either an accomplice or in league with the thief,"
2. " there is general complaint of offences in the Cantonment against the accused. For this reason the accused, in our opinion, is guilty of the theft of two horses from Kohat Cantonment,"
3. " they recommended R. I. for 1½ years."

Jirga members were :—

1. Mohammad Jan.
2. Amin Gul.
3. Subedar Khadi Sher.
4. Amir Ali Khan.

NOTE.—No evidence was taken by the *jirga*.

Précis No. 11.

Case No. 26 of 1920.

PESHAWAR.

King Emperor versus *Burhandin and others.*

CHARGED UNDER SECTIONS 302 AND 306, I. P. C.

Case tried under Section 11, F. C. R.

A dacoity was committed in the house of one Qalander in village Kuladand. His daughter was killed by dacoits, who were armed, but no motive other than loot could be ascribed to the raiders. They carried off property belonging to Qalander who did not identify any of the dacoits but, nevertheless charged no less than 8 persons responsible for the murder of his daughter and for the robbery committed in his house. There was absolutely no evidence against any of the accused named by Qalander. Some of the accused absconded and the rest were challaned by the police. The case was eventually referred to a very strong Jirga consisting of 10 members. The Magistrate recorded that the accused were Mohmands while the complainant was Mohammedzai by tribe. A mixed Jirga was for that reason appointed. Both parties accepted the personnel.

The proceedings before the jirga were very short. The parties agreed to abide by the oath of four referees named by them. Three of them swore with the Quran in their hands that three out of the four accused before the jirga were guilty of the dacoity, while the fourth referee refused to take oath. The verdict of the jirga was in the terms of the agreement of the parties and the accused were declared guilty of dacoity and murder.

On receipt of this finding the Magistrate accepted the finding and sentenced the three accused to 14 years' rigorous imprsionment subject to confirmation by the Chief Commissioner, who in due course confirmed the sentences. The Magistrate felt justified in acting on the finding of the jirga given, in the circumstances already stated, on the following two grounds :—

1. " As a general rule the whole body of Mohmands resident in British territory know who are guilty of the various crimes for which Mohmands are responsible. The accused in this case are Mohmands and the ' compurgators ' who declared them guilty are also Mohmands," and
2. " The oath was taken before the open jirga."

NOTE.—The accused might have been rightly convicted in this case. The procedure resorted to by the *jirga* is perhaps open to the comment that no effort was made to elicit from the referees, who affirmed the guilt of the accused, as to whether they deposed from personal knowledge, belief or suspicion. If what they stated was warranted by mere suspicion or belief resting on surmise, there can be no two opinions as regards the worthlessness of their evidence. If, on the other hand, they had personal knowledge of the complicity of the accused the conviction was justified. Personal knowledge in this connection may not necessarily be that derived from being an eye-witness to the dacoity and murder. If they had first hand information as regards the accused forming part of the gang which proceeded to raid Qalander's house it would be valuable. If the referees had personal knowledge of the possession by the accused of the property obtained in the course of the dacoity in Qalander's house their opinion would likewise be valuable. In the absence of questions of this kind being put to the ' compurgators ' and replies thereto being obtained it is impossible to say that the accused were convicted on evidence which leads to moral certainty in the mind of a prudent person who may be prepared to ignore all technical considerations but would insist on satisfactory evidence.

Precis No. 12.

Case No. 137/2.

PESHAWAR.

Crown through Arab Shah of Kunjbanda

Versus

Zardad, Ziarat Khan, Guldad sons of Said Sharif, Defendents.

SECTION 302, I. P. C.

In this case the accused were charged with the murder of one Wazir, a boy of 18 years of age. The motive was said to be that the deceased had contracted an intimacy with Mussamat Bakht Jan the unmarried sister of the accused. As no conclusive evidence to establish the guilt of the accused was forthcoming the case was referred to a jirga comprised of the following :—

1. Mohammad Aslam Khan of Hoti.
2. Subadar-Major Abdul Hamid Khan of Hoti.
3. Sardar Partab Singh of Hoti.
4. Dr. Prem Singh of Backet Ganj Mardan.

The jirga finding was that as Mussamat Bakht Jan, the unmarried sister of the 3 accused, had contracted intimacy with the deceased it was quite possible that Ziarat Khan, the eldest of the three brothers, had avenged the disgrace of the family by killing the deceased in accordance with the Pathan custom. They therefore recommended that of the three accused, only Ziarat Khan should be held guilty of the murder. Acting upon the jirga finding the Assistant Commissioner convicted Ziarat Khan under section 302, I. P. C. and sentenced him to 14 years' rigorous imprisonment subject to the confirmation of the sentence by the Chief Commissioner, discharging the other two accused on 9th December 1924.

On this the Chief Commissioner's order dated 19th January 1925 runs as under :—

" The jirga in this case have given no satisfactory reasons for their finding and I am not prepared to confirm the sentence as the case stands. In the absence of evidence the case should be decided by one of the customary methods ; the oath of either party and its witnesses for instance. The case should be referred back to a fresh jirga for further investigation and a final finding."

The Assistant Commissioner, Mardan appointed the same jirga as before and in compliance with the instructions of the Chief Commissioner the jirga members examining, the five prosecution witnesses on oath, held that Ziarat Khan was guilty of the murder. On the other hand Ziarat Khan's witnesses, numbering 5, also swore to his innocence in the guilt. It is also noteworthy that the complainant himself, although summoned, did not appear before the jirga. In view of the absence of the complainant, the Assistant Commissioner Mr. Caroe recommended acquittal of Ziarat Khan subject to his and the complainant's execution of bond under Section 41, F. C. R.

On return of the file to the Chief Commissioner he did not agree with the recommendation of the A. D. M. and confirmed the sentence of 14 years rigorous imprisonment passed by the former A. D. M. in the first instance on the ground that the file did not show that a summons was served on the complainant, according to the report of the peon, Tribal territory and that the findings of the jirga were not based on the oaths of the prosecution witnesses.

On an application of Revision as well he did not see any reason to interfere in the matter.

Précis No. 13.

Case No. 14/2 of 1923.

Crown through Saifullah versus *Sahibzada, 2. Gundal,* and *3. Haidar.*

CHARGED UNDER SECTCON 302, I. P. C.

Date and time of occurrence 7-30 p.m., 24th March 1923.

Date and time of Report 8 a.m., 25th March 1923.

The innocence of the guilt of the persons was referred to the Council of Elders consisting of three members. Before the jirga the parties chose Abdul Karim, Mehrban Shah, Nur Hashim, Gul Hasham, Imams of Dhari Nawab and Gulab motabars of Sabuki, Rahmat Shah Lambardar and Abdul Hinan and Ghulam Hassan and Qaino and Hamesh Gul as their arbitrators and said that they would accept what these people said on oath.

Five men namely Mehrban Shah, Nur Hasham, Gulab Shah, Rahmat Shah and Abdul Hinan out of the 10 persons appeared before the jirga. Of these Mehrban Shah said that he could not say whether the accused under arrest were guilty or not. Abdul Hinan said that he was a relative of the accused and that they were not guilty. The remaining three persons Nur Hasham, Gulab Shah and Rahmat Shah stated on oath that the accused were guilty. They said that Ghulam Akbar prosecution witness arranged this murder by the payment of money to Sahibzada accused as the deceased had enmity with Ghulam Akbar.

In the opinion of the jirga there was no necessity of making further investigation nor was there any need to summon the remaining five witnesses. The jirga said, " We have made open and secret enquiries. The fact is that on the day of occurrence the deceased was going home from his village, when he reached a clump of trees, Sahibzada, accused, fired at him from very close quarters and killed him. The deceased died instantly. The jirga found that the accused under arrest had killed the deceased over the ' miana ' in dispute and that they were guilty.

The order of the Council of Elders is dated 9th August 1923.

Order of D. C., dated 25th August 1923.

The findings of the Council of Elders confirmed the proseuction case Sahibzada is the only murderer of Saifullah and Ghandal is an abettor. The findings are correct. Sahibzada being guilty of an offence under section 302 is sentenced to 14 years subject to confirmation by the Chief Commissioner. Ghandal sentenced to 7 years under Section 302/114, I. P. C.

Précis No. 14.

CHARSADDA.

Crown through Malik Aman of Tangi Barazai

Versus

1. Izzat,
2. Mohammed Hussain *alias* Gujor of Tangi Barazai.

SECTION 302, I. P. CODE.

Occurrence night of 23/24th March 1928.

F. I. R. 6-45 A.M. on 24th March 1928.

Sahibullah Lambardar, made the following report at the Thana

The dead body of Malik Aman a lad of 15/16 years of age was found lying in the lane in front of Mullah Hanifulla's house. His brother Abdul Qaiyum said that Izzat murdered the deceased by strangulation, and that he knew that Izzat was in love with the deceased and the couple used to go about together. The remaining part of the story would be related by the deceased's brother.

Remarks of the Committing Magistrate, 18th May 1928.

Medical evidence proved that the deceased was strangled presumably with a puggaree which was found knotted tightly round the neck. It was alleged that the crime is the result of an unnatural passion. Gujor is supposed to have practised sodomy on Izzat, while the latter desired to commit the same crime with Malik Aman who according to the witnesses produced, denied him this pleasure and had been murdered in consequence. Police investigation produced a slightly different theory. Malik Aman used to extend his favours to Izzat but there had been a quarrel between them about a fortnight before and it was on account of this quarrel that the murder took place.

There is ample evidence to show that Malik Aman was very frequently in the company of both the accused and that he was last seen in their company on the night of the occurrence.

A point against Gujor is that chaff was found on the body and in the clothes of the deceased and similar chaff was found in a heap in the corner of Gujor's house and scattered about the

brother. Afterwards Moghal Shah said something improper to Mussamat Lalmira who told Alias who became enraged and one day murdered Moghal Shah with a shot gun. Alias Khan admitted having murdered Moghal Shah because the latter had illegal connection with Mussamat Zarmina his brother's wife. The jirga found that Moghal Shah had no connection with Mussamat Zarmina. They added that, blood money used to be Rs. 300 but as the people have become wealthy hence in our opinion Rs. 800 in British coin should be paid as blood money in lieu of the murder of Moghal Shah by Alias Khan to Gul Shah the deceased's father. Zarghun Shah, one of the jirga members and a relation of Alias Khan, accused, dissented.

The Deputy Commissioner agreed with the finding of the Council of Elders and held Alias guilty of the murder of Moghal Shah.

In accordance with the recommendation of the jirga he ordered Alias Khan to pay blood-money of Rs. 750 in addition to the Government fine of Rs. 700.

The order of the Deputy Commissioner is dated 26th October 1926.

Précis No. 19.

DISTRICT BANNU.

Case No. 19/11 of 1927.

Crown Versus Wakhidad s/o Maula Dad, Wazir of Waziran.

Charge u/s 302 I. P. C.

On 19th June 1925 Gul Ghazan was murdered by Wakhidad, who absconded to Tribal Territory but subsequently handed himself up unconditionally for trial. The case against him was referred to a Council of Elders under section 11 F. C. R. He admitted having murdered Gul Ghazan. The facts as found by the Council of Elders were as follows :—

Gul Ghazan and Ghazan Khan, brother of Wakhidad the accused were Khassadars serving under Jemadar Aimangai. Some five months before the offence Ghazni Khan the brother of the accused had been shot. As Gul Ghazan was accused of having shot Ghazni Khan the case was investigated by the Police but the facts were so much distorted that the Police came to the conclusion that Ghazni Khan had accidently shot himself while cleaning his rifle. The present accused however maintained that Gul Ghazan had shot his, accused's brother. The Council of Elders unravelled the true facts of Ghazni Khan's murder which were as follows :—

Aimangai was in love with Ghazni Khan, the accused's brother whom he kept as his personal orderly and " Werka." Gul Ghazan was constantly remonstrating with his brother Aimangai about this and complaining that he was spending his whole pay on Ghazni Khan. Aimangai replied that his pay was his own and he would do what he liked with it. The brothers consequently were on bad terms. On one occasion Aimangai told his brother to do sentry duty in place of Ghazni Khan but Gul Ghazan definitely refused to do this. One day when he found Ghazni Khan in the house of Aimangai he shot him. As already stated the case was investigated but was filed and no action was taken against Gul Ghazan.

Five months later when the present accused Wakhidad was sitting in the Chauk, which is the joint property of the accused and his cousin Zarabat Khan, Gul Ghazan walked in. The impudence of Gul Ghazan in walking into the Chauk so boldly enraged Wakhidad to such an extent that he seized his rifle and shot Gul Ghazan on the spot. The D. C. therefore convicted the accused Wakhidad u/s 302, I. P. C. He says that " the facts stated above do, however, in my opinion entitle the accused to leniency as regards punishment. I therefore sentence the accused Wakhidad to 7 years R. I."

The order of the Deputy Commissioner is dated the 14th, July 1927.

NOTE.—No proceedings except the statement of the accused by the *jirga*.

Précis No. 20.

CHARSADDA.

Crown v. Ghulam Habib.

304.

One Ghulam Haider stands charged with the murder of Afroze, wife of his uncle. The accused absconded to Tribal territory but returned subsequently.

The deceased had a quarrel with the mother of the husband of the deceased. The accused, the nephew of the complainant, struck Afroze with an axe and killed her.

The accused confessed his guilt, only alleging grave and sudden provocation. There is complete Judicial proof in the case. But the Committing Magistrate stated " Judicial proof is more than sufficient, but in view of the fact that he surrendered himself with the hope that he would not be committed to the Sessions, which had been agreed to by myself, I refer the case for Jirga.

The Jirga said, " After paying consideration to the facts and the statements on the file we are of opinion that the accused has committed a criminal offence but unfortunately this offence is charged in the form of a serious crime. Accused is guilty of 326 I. P. C. and in our opinion he is liable to 2 years imprisonment." District Magistrate says that there can be no doubt that the accused was gravely provoked. I sentence him to 7 years R. I.

Note by member.

(1) Despite there being full judicial proof the accused was sent up for Jirga trial by the Magistrate.

(2) The possibility of a trial in the Sessions Court acts as a deterrent. Hence the popular belief that Jirga have contributed to the multiplication of Crimes in the Province.

(3) The Jirga went so far as to suggest the number of years for which the accused to be sent to jail.

Précis No. 21.

HAZARA DISTRICT.

Case No. 22/2 of 1927.

Crown V. *Mohammad.*

Charge under section 457, I. P. C., tried under Section 11, F. C. R.

This was one of a batch of three cases in which Mohammad accused was prosecuted for offences under sections 457 & 460, I. P. C. This record relates to what has been described in the Magistrate's order of reference to jirga as case No. 1. The accused was alleged to have committed house-breaking by night in the house of Hira Singh. The evidence against the accused consisted of the recovery of a shawl in the course of a search of his house, which was identified by Hira Singh complainant to be his. The evidence relied on by the prosecution, if accepted as true, would warrant conviction by a criminal court. The Magistrate recorded the evidence for the prosecution and defence and framed a charge sheet, but subsequently moved the D. C. to refer the case to a jirga. Accordingly the D. C. remitted the following issues to a jirga consisting of 4 persons :—

1. Is the gulabi shawl the property of Hira Singh, the complainant ?
2. Was it discovered in the house of Mohammad ?
3. If so, was it stolen by Mohammad from Hira Singh ?

The jirga found the accused guilty, holding that he had stolen the shawl, the property of Hira Singh, complainant, but proceeded to find that two other persons, Shaikha and Ilahiya were his accomplices and were also guilty.

The jirga referred to a confession made by Shaikha which was retracted in a cognate case, and which confession led to the search of Mohammad's house and to the discovery of the shawl.

The D. C. who had made the reference was apparently succeeded by another officer, who referred the case to a 2nd jirga on the ground that the verdict of guilty against Shaikha and Ilahiya, who had not been accused in the case, was not justified. He mentioned some other grounds for the action he took. The 2nd jirga arrived at the same finding.

Finally the D. C. sentenced the accused to 7 years R. I.

NOTE.—There was no reason for the case being tried through a jirga instead of by a Court. The evidence relied on by the second jirga consisted of the testimony of Hira, who identified his shawl, and of another witness, Gopi, who likewise proved the shawl to be the property of Hira Singh. The recovery of the shawl in the search of the accused's house shortly after the burglary was satisfactorily proved by the officer making the search. The case was apparently referred to the jirga because the confession of Shaikha was considered by the Magistrate to be inadmissible, but the D. C. who made the original reference to the jirga definitely ruled that it was admissible under section 27 having led to the discovery of the stolen property from the house of the accused. The reason why trial through the jirga was preferred apparently was certainty of a conviction and of no appeal being possible.

Précis No. 22.

KOHAT DISTRICT.

Case No. 115 of 1929.

Crown through Yunas Versus *Lal Baz s/o Mir Khan of Lachi.*

Charge under section 307, I. P. C.

The prosecution story in this case is that on the evening of 9th October 1928 Yunas complainant in company with Bahadari went to look after their maize fields. While passing the garden of one Mohammad Ali Khan they saw a helping party including Lal Baz accused who had apparently come to look after the crops in the garden. After greeting, Lal Baz seems to have called out, half jestingly, saying they were thieves out for the stealing of maize. This led

to an altercation and abuse. Lal Baz lost his temper and fired a shot, with the rifle he had which fortunately passed between Yunas and his companion without wounding either. He then threw down his rifle and hid it in a maize field and made off. A number of other persons had arrived by this time and Yunas went to report to Shamasud-din-Khan, his master. A report in these terms was made next morning in the Police Station.

When investigation started, the Sub-Inspector induced Lal Baz to produce a rifle, from the house of a woman named Bibi Gula, which appeared to have been freshly fired. Eventually Lal Baz himself admitted in court that he had actually fired a round from this rifle one day before the evening in question but sought to defend himself saying that he had fired at a jackal to scare it off the crops. The Assistant Commissioner's remarks run as follows :—

> "The stories of Yunas and Bahadar generally corroborate one another. There is no hint that any enmity existed between the complainant and accused such as might have induced complainant to make a false charge against Lal Baz. Lal Baz himself admits that he fired a shot, and his plea that it was directed at a jackal is absurd. The case might easily have been dealt with in the ordinary courts if the magistrate had given it a little more attention."

The Jirga held that there was no doubt whatever as to the truth of the case, and stated that Lal Baz suddenly flew into a passion on being abused and fired the shot.

The Deputy Commissioner convicted Lal Baz of an offence under section 307, I. P. C. Taking into consideration that there was no premeditation, under section 307. I. P. C. read with section 12 F. C. R. he sentenced Lal Baz to 2 years' R. I.

The rifle was forfeited to Government.

The order of the Deputy Commissioner is dated the 21st February 1929.

Précis No. 23.

DISTRICT PESHAWAR.

Case No. 22 of 1928.

Crown through Waris (deceased) of Hisar Tang

Versus

1. *Shera Din*
2. *Ziarat Gul*
3. *Makki Din*

} *All three of Hisar Tang.*

Charge under section 302, I. P. C.

Murder of Waris.

In this case three persons, namely, Shera Din, Ziarat Gul, and Mohi-ud-din were charged under section 302, I. P. C., with the murder of one Waris. The accused and the deceased belong to village Hisar Tang, Police Station Nizampur. The occurrence, it is alleged, took place in the beginning of November 1927, and the F. I. R. was made on the 23rd November 1927 by Piara Din, uncle of Waris, in which he said that the deceased was murdered by the three accused. Subsequently a corpse was seen in kila and the villagers of Hisar Tang identified it to be the dead body of Waris. A torn up shirt, a trouser and a kullah which were found on the spot, were identified to be that of Waris. The body was headless. The motive is said to be that the deceased and accused had gambled and as the former had won all the money, the latter had killed him because they wanted to rob him of his money. The case was referred to a jirga on 5th January 1928 by the A. D. M. The members of the jirga were :—

1. Mohammed Hafiq.
2. Shah Mohammed.
3. Risaldar Abdullah Khan.
4. Mohammed Akram Khan.

The finding of the members of the Council of Elders is dated the 26th January 1928. They went through the Police files and the Judicial record and examined witnesses for the prosecution and the defence. They made open and secret enquiries. They took Shahadat-i-am at village Hisar Tang on 22nd January 1928. They also made enquiries from the inhabitants of the neighbouring villages. There were eight witnesses for the prosecution including the mother of the alleged deceased. Almost all of the witnesses for the prosecution said that the deceased had been murdered by the three accused. Three of the members of the jirga, namely, (1) Mhd. Akram, (2) Risaldar Abdullah Khan, (3) Shah Mohammed were of opinion that the deceased was murdered by Ziarat Gul and Shera Din. As regards Mohi-ud-din they said that although he was present at the time of the murder, he had not taken part in it; while the fourth member Mohammed Rafiq Khattak, Honorary Magistrate was of opinion that Ziarat Gul alone was guilty and the other two accused persons were innocent. The members of the Jirga

also make mention of a letter written by Mr. Mohammed Yaqub. Judicial Extra Assistant Commissioner, dated the 16th January 1928, in which he stated that the accused were terrible gamblers and that they had murdered the deceased. The members of the Jirga strongly relied on the contents of this letter written by a responsible officer. While the finding of the Jirga was being translated into English, the A. D. M. received a telegram informing him that the alleged murdered man was alive. On 31st January 1928, the A. D. M. passed an order on the back of the telegram to the following effect :—

" As the deceased person has been found out to be alive, so the accused are discharged. The file will show beyond any shadow of doubt that the body of a dead person was found out and seen after it was believed by all the people that it was the body of the deceased. I am therefore not prepared that the accused were falsely charged by any one in a deliberate way. Hence no action against any one is necessary. "

Précis No. 24.

BANNU DISTRICT.

HATHI KHEL CASE.

Case No. 53/11 of 1930.

Date of institution in the Court of D. C., 12th December 1930.

Date of decision in the Court of D. C., 21st January 1931.

Goshwara No. 1439 of village Aral, Paragana Bannu.

Crown through Captain Ashcroft and others : murdered and wounded sepoys of the 6/13th Rifles (F. F.)

Versus

Ayub Khan, etc., 87 accused, List attached.

Charge under sections 149/302, 147 and 148, I. P. C.

The circumstances of the case which are said to have led to the incident of the 24th August 1930 at Spina Tangi near Police Station Domel, are as follows :—

In the spring of 1930 " The Congress movement " is said to have spread from the city of Bannu to the surrounding country side. The main supporters of this movement were Mullah Abdul Jalil and Mulla Fazl-i-Qadir. The latter was known to have been the principal speaker at certain Congress meetings held in villages. He succeeded in obtaining the sympathies of Ayub Khan (accused No. 85), a Hathi Khel and a near relative of the head of that tribe, the late K. B. Khair Mohd. Khan.

By notification No. 9159-P. of 11th May 1930 the Hon'ble the Chief Commissioner declared the association known as the " Bannu District Congress Committee " and " subordinate allied bodies " and the " Naujawan Bharat Sabha ", respectively, in the Bannu District to be unlawful within the meaning of section 16 of the Criminal Law Amendment Act 1920, as these were interfering or had for their objects interference with the maintenance of Law and Order and that they constituted a danger to the Public peace.

On the 10th of July 1930 the District Magistrate of Bannu Mr. C. H. Gidney promulgated an order under section 144 Cr. P. C. in the Bannu District " prohibiting the holding of any procession or gathering within the Municipal limits of Bannu city or within a radius of 10 miles until further notice ". He further prohibited until further notice, " the carrying by any person within the above limits of any lathi, lor, knife or any weapon of offence or capable of being used as such ". The public were further warned that volunteers of the Congress Committee, etc., noted above were prohibited " from appearing in any part of the District Bannu and if they were to do so in disregard of the Local Government's Notification No. 9159-P., dated the 11th May 1930, they would be dispersed by force ".

On 10th July 1930, the operation of the said order of the District Magistrate, Bannu, dated the 14th May 1930 was extended by the Notification of the Local Government No. 13660-P., dated the 10th July 1930 for a further period of two months with effect from 14th July 1930.

On 10th August 1930 the Resident in Waziristan saw a Hathi Khel Jirga and announced to them an ultimatum (it does not appear under what Act) which was to expire on the 12th August 1930. The terms were as follows :—

1. The surrender of all licensed arms and all the village defence rifles.
2. The bringing in of the 5 principal Hathi Khel ring-leaders.
3. The expulsion of Mullah Fazl-i-Qadir.
4. The cessation of Congress meetings within Hathi Khel limits.

As none of the terms were complied with, the D. C. of Bannu Mr. C. H. Gidney (after obtaining sanction from Colonel Griffith, Resident in Waziristan on 20th August 1930) directed the seizure of the following persons and of all property belonging to them under section 21, F. C. R.

1. Ayub Khan s/o Umar Khan, 2. Mirdad s/o Saida Khan, 3. Mir Salam, Pital Khel, 4. Badshah Khan s/o Nawaz, 5. Amir Sher Khan of Murghali, 6. Taj Ali Khan of Murghali, 7. Ahmad Shah s/o Rehmat Shah, 8. Durranai s/o Umar, all described in the proceedings as residents of British territory District Bannu. Mr. Gidney further directed, " in the event of these persons not being found, the confiscation of all their property and the arrest of their relatives and the seizure of such moveable property belonging to these relatives as may be found."

In compliance with the Deputy Commissioner's order, Mr. Ghulam Hassan Khan, Magistrate, Illaqa Domel, with the D. S. P. went to Murghalli on the morning of 21st ; and reported that, " (*a*) Taj Ali was already in the lock-up and no moveable property was found in his house."

" (*b*) Amir Sher Khan was not found in his house. His relatives—1. Khalifa s/o Rehmat Din, caste Wazir Parba Khel, uncle of Amir Sher Khan, 2. Newaz s/o Meraj Gul, b/o Amir Sher Khan, 3. Sher Ahmad s/o Inzar, 4. Dad Gul s/o Pirat Khan, 5. Wazir Azam s/o Spin Gul were arrested and handed over to the Assistant Commissioner as ordered by the Deputy Commissioner. All the live stock belonging to the near relatives of the said Sher Khan *e.g.*, cows, donkeys, goats, etc., etc., were handed over to the Domel Police."

" (*c*). On the morning of 22nd August 1930 the houses of Ahmad Shah and Durranai were searched. They were not found in the village but their relatives—1. Zalak s/o Umar Khan b/o Durranai, 2. Gul Isab s/o Kharak cousin of Durranai, 3. Gula Badshah s/o Rehmat Shah b/o Ahmad Shah Dasta Pir s/o Mirgul, 5. Khidar Khan s/o Dasta Pir were arrested and handed over to the Domel Police." Their live stock, *e.g.*, cows, donkeys, trunks, wool, thread, wheat, charpoys, etc., etc., were handed over to the Domel Police.

All property moveable and immoveable of Taj Ali Khan, Amir Sher Khan, Durranai, Ahmad Shah, Ayub Khan and Mirdad Khan was attached and confiscated. Subsequently the immoveable property of the first four was restored. The immoveable property of Ayub and Mirdad was restored to their relatives on 18th April 1931, *i.e.*, three months after their convictions.

On the 21st of August 1930 parties of Troops, Constabulary and Police rounded up the villages of absconding ring-leaders. Three of these were arrested but Ayub Khan and Mirdad, accused Nos. 85 and 86 were not found at their village. This action had succeeded in bringing in certain licensed weapons.

On Friday, the 22nd August 1930 an announcement was made in the Kasaban Mosque, outside Bannu city that a large meeting would be held at a hamlet called Mash Killi in Hathi Khel Limits.

On 23rd August 1930 the Deputy Commissioner instructed the Superintendent of Police to proceed to the proposed place of meeting. Here large Chapar was found in course of erection and was demolished and the materials were burnt. Three persons who were said to be the conveners of this proposed meeting were arrested and after consultation with the Resident in Waziristan the Deputy Commissioner decided to confiscate the property of these persons and burn their houses. It is not apparent from the record whether this order of the Deputy Commissioner which was subsequently carried into effect was an oral order or written one. Further it does not appear from the record as to under what act or regulation this decision was arrived at. Was it an executive order or order passed under section 34, F. C. R. ? Nobody can say. Accordingly on the morning of 24th August 1930 a combined force of 300 of the 6th Bn., 13th Frontier Force Rifles together with 100 Frontier Constabulary moved out to a point some 12 miles along the Bannu-Kohat Road. Two parties were formed. One party proceeded to the hamlet of one Bijan, an alleged convener of the meeting whose house was duly destroyed and burnt. The house of one Raibat was also burnt.

While this was being done a message was received that Mulla Fazli Qadir, Ayub Khan and Mir Dad were in the neighbourhood with their men and that they wished to surrender themselves but before doing so wished to see an officer. The Deputy Commissioner sent off two Wazir Maliks (not Hathi Khels) to discuss more precisely what Ayub Khan, etc., wanted.

The Maliks returned with a reply that Ayub Khan, etc., refused to have anything to do with any maliks but wished to see an officer (*vide* statements of Political Tehsildar, M. Ghulam Hassan Khan, E.A.C., Saidan Gul before the Special Magistrate Mufti Mohammad Yaqoob Khan). Very shortly after this a messenger arrived direct from Ayub Khan that he and his party could surrender themselves at Bannu Jail and insisted on holding the meetings and further that all confiscated property should be returned to the owners. (*Vide* statements of the above witnesses.)

Captain Ashcroft who was directed to reinforce a platoon of the Military left at Mamash Khel however decided to move forward in the direction of the crowd. This he did, halting at some 50 yards from the crowd. According to the prosecution witnesses and the finding of the Jirga this crowd numbered about 600. According to p. w. Dewan Ali, another witness for the prosecution produced before the special Magistrate, it appears that Captain Ashcroft with his 25 men pushed his way into the mob and ordered his men to fix bayonets, after pushing a youngman aside and grappling with an old man with a long beard. It appears from the evidence

that several members of the mob were armed with swords and firearms. The result was that Captain Ashcroft and 8 sepoys of the 6/13th Rifles (F. F.) namely :—

No. 6890 Sepoy Raja Khan
No. 6287 L/N Sajawal Khan
No. 9933 Sepoy Yakub
No. 9446 Sepoy Abdul Aziz } were killed.
No. 6687 Sepoy Jalal Khan
No. 6854 Sepoy Walli Khan
No. 8457 Naik Mohd. Zar Khan
No. 6901 L/N Suleman Ali

and 10 wounded on the Military side.

How many were killed and wounded on the side of the mob no one can exactly say. It is a very significant fact that while many witnesses for the prosecution depose that they had seen many men belonging to the crowd killed and wounded, they are unable to give even an approximate number. It is admitted by the members of the Jirga and also by the D. C. that the casualties on the side of Hathi Khel were very heavy indeed.

After the firing had ceased a large number, *e.g.*, 67 of the mob, and called by the Jirga and D. C. a "Lashkar" who were apparently lying on the ground taking shelter were brought in by the troops to Bannu and placed in the Jail. It appears that soon after the occurrence, most of the accused persons were put in the Political Havalat and by the order of Mr. Gidney, Deputy Commissioner, Bannu, dated the 16th October 1930 they were transferred to the judicial lock-up. This number forms the majority of the accused. A certain number of arrests were also made. Subsequently the total number of the accused was 86. No "parcha" was cut for 24 days. After the expiry of this period the present accused were challaned. The case was enquired into by the Special Magistrate, Mufti Mohammad Yaqoob Khan, especially deputed for the purpose.

On 24th November 1930 Mr. Campbell, D. C., Bannu, issued the following instruction to the Special Magistrate :

"With reference to the Case Crown *versus* Hathi Khel you are to conduct as full an enquiry as possible preliminary to the submission of the Case to a Council of Elders, under Section 11 F. C. R., *i.e.*, the proceedings of the F. C. R." On 26th November 1930 the applications of the accused to engage the services of pleaders, were refused both by the D. C. and the Special Magistrate, as the enquiry was *ab initio* under the F. C. R. The enquiry before the Magistrate commenced on 26th November 1930 and lasted till 2nd December 1930. The Special Magistrate examined 47 witnesses for the prosecution who had direct knowledge of the occurrence. The medical evidence (*vide* statement of witness No. 46 Lieutenant Chaudhary, I.M.S., Bannu) shows that "Captain Ashcroft had one gun-shot wound and a lor wound on the right temple. The post-mortem examination was not considered necessary as the cause of death was definitely known. On question by the prosecuting Inspector, the witness stated that in his opinion the lor injury was inflicted on Captain Ashcroft after he was dead as a result of the gun-shot wound. The gun-shot wound killed Captain Ashcroft immediately. The lor injury might have been inflicted after the gun-shot wound. There was no flow of blood from the lor injury ; whereas there was a lot of bleeding from the other injury and this showed that Captain Ashcroft was dead when he was struck with the lor. The other persons, who were killed on the side of Military had bullet wounds."

Dr. Sardari Lal, witness No. 47, Bannu, examined injuries on the bodies of 28 persons belonging to the Hathi Khel tribe and others, three of whom died subsequently. Most of these injuries were due to shots fired from small-bore rifles. As there was no charring on any of the wounds, the shots in the opinion of witness, must have been fired from a distance of 4 or 5 feet.

The statements of Lieutenant Chaudhary, I.M.S., and that of the Assistant Superintendent of Police show that information of this collision was given to the Deputy Commissioner. Captain Wainwright and his party came up and lewis guns were fixed and were fired for about three hours. At the close of firing, the dead and wounded were found in the dry bed of Spina Tanga Nallah. P. W. 6, Head Constable Mian Hamid of the Bannu Police, says that wounded and dead belonging to the crowd were lying on the spot. The witness picked up 3 or 4 wounded persons but the Superintendent of Police said that it was getting late and that "We must go and so we all went away leaving the dead and the wounded of the mob at the spot."

P. W. 10 Sher Mohammad Khan, Sub-Inspector of Police said the orders of the Deputy Commissioner under section 144, Cr. P. C. were made public by him personally to the villagers through the Lambardars of different villages. Ayub Khan, Mirdad and Mir Azam were leaders of the Congress. The houses of Bijan and Robiat were burnt under an order from the Deputy Commissioner. (See also the statement of K. S. Sultan Mohammad Khan, Political Tehsildar).

P. W. 12 Jemadar Diwan Ali of the 6/13th Rifles says that many persons belonging to the mob were armed. Some of the members of the mob were shouting "Allah-o-Akbar". He goes on to say, "Captain Ashcroft gave us no definite orders that 'we should fire or not'".

Captain Ashcroft pushed away an old man with a long beard. Munawar, P. W. 13, stated that " Captain Ashcroft and his party entered the mob and mixed up with them and that Captain Ashcroft was struck with a sword on the head and also received a gun shot in the neck."

Both the assailants of Captain Ashcroft, *e.g.*, the old man with a long beard and a young man were shot dead by the witness. The witness saw an old man getting hold of Captain Ashcroft's clothes and in return Captain Ashcroft got hold of the old man's clothes. The witness fired at the old man who was grappling with Captain Ashcroft and shot him dead.

P. W. 26 Atta Mohammad Khan deposed as to the message about surrendering that passed between Ayub Khan and the Deputy Commissioner as given above. The witness further stated that he saw Captain Ashcroft going towards the mob and told the Deputy Commissioner that the officer in question was taking a dangerous step. The Deputy Commissioner sent for Malik Muzaffar Khan and orderd him to go at once and stop Captain Ashcroft from going towards the meeting. Malik Muzaffar Khan, mounted a horse and had gone about fifty paces to give the D. C.'s message to Captain Ashcroft when a shot was heard and shortly after more shots were fired. Malik Muzaffar Khan therefore returned towards the place where the D. C. was. After 5 or 6 shots had been fired " on the entry of Captain Ashcroft with his party into the mob, the Military fixed 3 Machine Guns and started firing at the mob." The witness proceeds to say that in accordance with the orders of Resident, " The Hathi Khels had deposited all their licensed arms before the 23rd August except 3 or 4 licensed guns and rifles because these persons would not deposit them ".

P. W. 38 Selwyn, A. S. P., Bannu proves the messages about the surrender from Ayub Khan, etc., to the Deputy Commissioner and further says that Ayub Khan and Mirdad were coming with their party to surrender on certain terms. The witness further says " We surrounded the mob at least half an hour before Captain Ashcroft came in contact with the mob." The witness could not say how many fire-arms the mob had but shots were fired by it.

It appears from the evidence of Mr. Rouse that Mullah Fazli Qadir was wounded and died when he was being carried on the top of a lorry to Bannu Jail.

It is also clear from the evidence that the houses of Ayub Khan and Mirdad were burnt soon after the occurrence.

The report of the Special Magistrate, Mufti Mohammad Yaqoob Khan is dated the 2nd December 1930. It was submitted to the Deputy Commissioner on 12th December 1930. He describes the facts and discusses the evidence.

It should be remembered that all the accused persons are British subjects, and residents of British Territory, District Bannu. The six principal accused persons namely, Ayub Khan Mirdad, Mir Sahibdin, Mir Azam, Pir Badan and Mohammad Sher pleaded alibi. Ayub Khan, Mirdad and Mir Azam surrendered during the trial. In a statement Ayub Khan says that he and Mirdad were absent from their village on the 22nd and 23rd August 1930. They had gone to the Marwat area. They returned on 24th of August and wished to have a talk with the Deputy Commissioner at Bannu to impress upon him that they were not Badmashes and ring-leaders of the Congress movement. They came to know that the Deputy Commissioner was at Mashkhel and therefore they had sent a message through Zarmir and Said Gul requesting the Deputy Commissioner to give them an interview. They never intended to take part in the meeting of 24th August 1930, and they never said that they wanted to lead a procession in Bannu City after the meeting was over and then surrender. Ayub Khan says that he was at a distance of 3 miles from the place of occurrence when he heard the shots and went straight away to his village.

Mirdad says that he was ill in Umar Khan Kaurana on the day of the occurrence. In other respects his statement is the same as that of Ayub Khan.

Both Ayub Khan and Mirdad declare that as many as 80 men belonging to the Hathi Khel tribe and others were killed on the spot besides a large number of wounded.

Mir Sahibdin says that he was wounded in the leg in his own village by a bullet fired by a machine gun.

The other three accused persons say that they were not present at the scene of occurrence at any stage.

On the 2nd January 1930, Mr. Campbell, D. C., Bannu, referred the case to a Council of Elders consisting of the following members :—

1. K. S. Arbab Sher Ali Khan of Taikhal, Peshawar.
2. Subedar Azizullah Khan of Penang, Peshawar.
3. Mir Alam Khan of Tangi, Peshawar.
4. Mohd. Umar Khan of Topi, Peshawar.
5. Khan Sahib Subedar Major Sultan Mir of Kohat.
6. K. S. Subedar Laiq Shah of Kohat.
7. Captain Alam Khan of Baghdada, Peshawar.

His order runs as follows :—

" On the 24th of August 1930, a collision occurred at Spina Tangi Mullah near Domel. In this affair Captain Ashcroft of the 6/13th F. F. Rifles was killed together with several men of his regiment. The Hathi Khels suffered very heavy casualties, a large number were killed and wounded and a greater number were arrested on the site or subsequently. These persons who were arrested are now on their trial."

" I now pass formal orders referring the guilt of the 85 accused (as per list attached) to a Council of Elders under section 11, F. C. R. The points for consideration by the Jirga appear to me as follows :—

It will be for Jirga to determine :—

1. Which, if any, of the accused formed part of this gathering and whether they are liable under section 147, I. P. C.
2. Which, if any, of the accused formed a part of this assembly being armed at the time and so are liable under section 148, I. P. C.
3. Which, if any, of the accused in defiance of orders and notifications promulgated under section 144, Cr. P. C. took part in this assembly with the common intention of committing murder and thus being liable under sections 149/302, I. P. C.

I would draw the attention of the Jirga members to the orders and notifications referred to in the evidence from which it would appear that at that time in this District a gathering of any nature would be held to be an unlawful assembly. It does not, therefore, appear to be open to very serious discussion whether the persons who took part in this affair had reached the point where they intended to hold a mass meeting. The mere fact of their having collected together with the intention of proceeding to an appointed site would appear to be in contravention of the orders promulgated. This, however, is a point on which the Jirga should give an opinion."

Finding of the Jirga, dated the 8th January 1931.

They said that their investigation continued from 2nd to 8th January 1931. They examined the Police and the judicial records, the statements of the Prosecution witnesses, of the accused and their defence. They also made secret and open enquiries. They find that the Hathi Khel tribe announced a meeting for 24th August 1930 at Spina Tangi. They further say that warrants of arrest were issued against Ayub Khan, Mirdad, Pir Badan and Mir Sahib Din before 24th August 1930, but that they evaded the arrest and carried on propaganda against the Government in company with Abdul Jalil and Fazl-i-Qadir. They say that a crowd numbering more than 600 with drums beating and in dancing attitudes was coming towards Spina Tangi from east to west. Ayub Khan, etc., sent Saidan Gul and Amir with a message that they had already advertised the meeting for 24th August 1930 and as they had invited other persons, they would hold the meeting on that day and after the meeting they would march with the procession through Bannu City and surrender themselves. They found that the accused who were subsequently convicted by the D. C. formed an unawful assembly and that Ayub Khan, Mirdad, Mir Badan, Mr Azam, Mohammad Sher and Mir Sahibdin were carrying fire-arms which they used on the 24th August 1930. They found the accused who were subsequently discharged by the Deputy Commissioner not guilty, as the members of the Jirga were of opinion that these persons neither formed part of unlawful assembly nor were they present at the spot. They were arrested on the road. It is to be noticed that the members of the Jirga do not discuss the evidence on the record and do not give reasons for their findings.

However, there is no evidence on the record to show that Ayub Khan, Mirdad, Mohammad Sher, Mir Azam, Mir Sahibdin and Pir Badan possessed fire-arms and that they had used these arms against the Military. Probably the finding of the Jirga is the result of their secret enquiries.

The final order of the Deputy Commissioner, Banuu was passed on 21st January 1931. After stating the facts, he finds that " the persons who formed the gathering were acting in contravention of lawful orders passed by the Deputy Commissioner, Bannu from time to time and that therefore all such persons were members of an unlawful assembly. The facts that they had or had not reached their goal does not enter into the question for they were already acting in contravention of these lawful orders in collecting together and marching to the scene of meeting ". He further finds that " it is only reasonable to suppose that the main number managed to make good their escape and there is strong presumption for believing that a considerable number of accused in court, were unarmed people who were too frightened to attempt to escape when such heavy firing as occurred was in progress and only lay near the scene of action to avoid being shot. Presumably the advent of troops, the noise of drums and shouts from the Lashkar and the general excitement prevailing attracted a large number of people to the site merely as onlookers ". He continues, " The number of weapons recovered from the scene of occurrence was peculiarly small. The witnesses for the prosecution have

been unable to identify any of the accused as being on the scene of occurrence armed with deadly weapons. Without such evidence therefore it is not possible to bring home the offence to the great majority of the accused. The Jirga, however, as a result of their enquiries, as can be seen from their finding have definitely found that Ayub Khan, Mir Azam, Mirdad, Mir Sahibdin, Mohammad Sher and Pir Badan were all armed with various kinds of firearms. Except for these six persons, therefore the offence under section 148, I. P. C. as against the remainder must fall to the ground". He goes to say that "the evidence of the men of the 6/13th Rifles show that an assault was made upon the person of Captain Ashcroft before any shot had been fired by the military or the police. There is no evidence whatsoever on record to show that the troops opened fire first." As regards the common intention of the six persons named above, Ayub Khan, Mirdad, Mir Azam, Mir Sahibdin, Mohammad Sher and Pir Badan, they intended to fulfil their intention to hold a meeting at the appointed place, in direct opposition to the force of Government in the vicinity, with the use of arms, the resultant action of which they cannot but have been aware".

The Deputy Commissioner therefore found Ayub Khan, Mirdad, Mir Azam, Mir Sahibdin, Moahmmad Sher, Pir Badan guilty of an offence under section 149/302, I. P. C. and sentenced Ayub Khan and Mirdad as being the leaders to 14 years' rigorous imprisonment each, subject to the confirmation by the Hon'ble the Chief Commissioner. He also sentenced Mir Azam, Pir Badan, Mohammad Sher and Mir Sahibdin to 10 years' rigorous imprisonment each, subject to the confirmation by the Hon'ble the Chief Commissioner.

The Deputy Commissioner also convicted and sentenced under section 148, the various accused whose names are given as "convicted" in the attached list. He accepted the finding of the Jirga as regards the remainder and discharged them.

The sentences on Ayub Khan, Mirdad, Mir Azam, Mir Sahibdin, Pir Badan and Mohammad Sher were confirmed by Colonel Griffith, the Commissioner and Resident in Waziristan on the 12th March 1931.

An application for revision of these six persons was rejected by Colonel Griffith, Resident in Waziristan on the 17th July 1931, in brief order which runs as follows :—

"The finding and the sentences in this case were clearly justified, the proceedings were regular and I see no ground for interference".

List of Accused.

1. Mohi-ud-Din son of Masha Din, Mamat Killa Wazir Spina Tangi.
*2. Balak son of Hayat, Wazir Spina Tangi.
3. Khawaja Mir son of Faizal, Wazir Mamat Killa.
4. Zakki son of Naulak, Wazir Mamat Killa.
*5. Kotanai son of Mir Baz, Wazir Mamat Killa.
6. Gulamir son of Mamir, Wazir Mamat Killa.
7. Jnant son of Sohbat, Wazir Hathi Khel, Mamat Killa.
*8. Sada Khan son of Sadia Khan, Wazir Mamat Killa.
9. Masim son of Gul Abaza, Wazir Mamat Killa.
10. Shah Zamir son of Mir Salam, Wazir Mamat Killa.
11. Azad Khan son of Gul Bagh, Wazir Mamat Killa.
12. Mehr Dad son of Sher Dil, Wazir Bandar Killa.
13. Amir Shah son of Sher Dil, Wazir Bakar Khel, Khattak Aral Killa.
14. Mir Sada Khan son of Amir Shah, Wazir Khattak, Aral Killa.
*15. Abdul Majid son of Zaffar Khan Khattak Aral Killa.
*16. Sahib Gul son of Gul Khan Khattak, Aral Killa.
17. Abdul Mohammad son of Gulahmad Aral Killa.
*18. Juma Roz son of Bawta Khan, Wazir Kurah Killa.
19. Sher Dad son of Mina Khan, Wazir Kurah Killa.
*20. Maluk son of Din Mohammad, Wazir Kurah Killa.
21. Haqmehr Shah son of Gul Mahdi, Wazir Azim Killa.
*22. Shah Khan son of Mohammad Akbar, Wazir Azim Killa.
23. Mohammad son of Wattai, Wazir Khorandil Killa.
24. Shain son of Sher Gul, Wazir Kamar Khel.
*25. Mir Sada Khan son of Gul Anar, Wazir Khoran Dil Killa.

26. Mir Agha Jan son of Zar Khan, Wazir Kamar Killa.
27. Said Khan son of Amin Khan, Wazir Kamar Killa.
28. Zari Shah son of Mehr Dil, Wazir Kamar Killa.
*29. Gul Khan son of Mehr Dil, Wazir Kamar Killa.
*30. Bahawal son of Mazan, Wazir Mani Jan Killa.
31. Abbas Khan son of Khan, Wazir Isa Khel.
32. Thakadar son of Karar, Wazir Isa Khel.
*33. Sardar son of Thakadar, Wazir Isa Khel.
34. Masin son of Vakil, Wazir Warana.
35. Bawta Khan son of Samand, Wazir Spina Tanga.
36. Ghazal son of Zar Khan, Wazir Mawar Killa.
37. Ghat son of Mir Khan, Wazir Mawar Killa.
38. Dabarai son of Mir Khan, Wazir Mawar Killa.
39. Said Khan son of Juma Khan, Wazir Spina Tanga.
40. Juma Khan son of Zadrai, Wazir Mawar Killa.
41. Amal Khan son of Aid Mohammad, Wazir Dandi Killa.
42. Fazalai son of Aid Mohammad, Wazir Dandi Killa.
43. Gul Jawahar *alias* Gulzar Khan son of Malik Azam, Wazir Dandi Killa.
44. Rabnawaz son of Mir Jan, Wazir Dandi Killa.
*45. Allah Khan son of Palla Khan, Wazir Sadarwan.
46. Jumawir son of Mirza Mohammad, Wazir Matakai.
47. Mirdad son of Awal Dad, Khattak, Jullundar Shah Killa.
48. Gul Mawas son of Mirash, Khattak, Sheikh Umaran Killa.
49. Hawal Dad son of Musharab, Khattak, Jullundar Shah Killa.
50. Mirza Khan son of Khanai, Khattak, Hinja Banda.
51. Nur Mohammad *alias* Khanai son of Sardad, Wazir Sparka.
*52. Abdul Manan son of Akor Khel, Wazir Khorindal Killa.
53. Ghulam Haider son of Yaran Muhana, Brahim Killa, D. I. Khan.
*54. Jawahir Shah son of Nazim Shah, Sayed, Thathi Michan Khel.
55. Wajan son of Mirza Khan, Jhandu Khel.
56. Sarfaraz Khan son of Muqarrab Khan, Pashtun, D. I. Khan.
*57. Gul Jawahar son of Lal Baz, Pashtun of Sikkandar Killa.
*58. Tor Ali Shah son of Walli Shah, Said, Adhami Jhandu Khel.
*59. Azam Khan son of Kata Mir, Khattak, Gambar.
*60. Fazal son of Khulgi Shah, Khattak, Gambar.
61. Sada Din son of Arafin, Quresh of Gambar.
*62. Mohammad Gul son of Haibat Khan, Pathan Sagi Michen Khel.
63. Nashadad son of Khan, Pathan Nurar.
*64. Zarbat Shah son of Bahauddin, Painda Khel, Manduri.
*65. Jan Mohammad son of Khani Shah, Wazir Karlasta.
*66. Aliasudddin son of Agar, Wazir Karlasta.
67. Ghafar Shah son of Mir Akbar, Qureshi of Jhandu Khel.
*68. Mohammad Amin son of Karim Dad Wazir, Mindar Khel.
69. Azmir son of Asal Din, Khattak of Akhami.
*70. Zar Khan son of Ghat Mir, Wazir Kherandal Killa.
71. Pir Ghulam son of Mir Kalam Pashtun of Mira Khel.
72. Mir Sahib Din son of Wahab Din, Qureshi of Khist Killa.
73. Gula Khan son of Purdil, Wazir Jata Khel.
*74. Khan Bad Shah son of Ali Mat Khattak of Amir Jan Killa.

*75. Khanzada son of Khanai, Wazir Braham Killa.
76. Azad Khan son of Zeri Gul, Khattak Aral.
*77. Shivrang son of Ghazni, Khattak Miwar Killa.
*78. Haq Dad son of Saleh Khan, Wazir Azim Navi Killa.
*79. Ali Hussain son of Mir Hussain, Wazir Chola Khel.
*80. Payao Khan son of Said Amin, Wazir Kotan Killa.
81. Mohammad Sher son of Bakhmal, Banuchi of Gambir.
82. Lal Baz son of Mir Baz, Pashtun of Sikandar Killa.
83. Pir Badan son of Nur Biyan, Khattak of Land Kamar.
*84. Fazal Rahim Mulla son of Muzammil Shah, Quresh of Sadrawan.
85. Ayub Khan son of Umar Khan ..
86. Mirdad son of Sada Khan .. .. } Surrendered during progress of trial.
87. Mir Azam son of Raz Gul .. ..

* These accused were sentenced to one and a half years rigorous imprisonment under Section 147 I. C. P.

The accused Ayub Khan and Mirdad are sentenced to undergo fourteen years' rigorous imprisonment subject to the confirmation of the Chief Commissioner, and accused Mir Azam, Pir Badan, Mohammad Sher and Mir Sahib Din to undergo 10 years' rigorous imprisonment subject to the confirmation of the Chief Commissioner.

The remaining accused were acquitted.

COPY.

List of people confined in Political Hawalat in connection with the case of Maulvi Fazal Qadir.

1. Mullah Abdul Khalim s/o Maulvi Mohammad, partana of Piran Taghal Khel b/o Qazi Fazal Qadir.

2. Mullah Rahmatullah s/o Maulvi Mirza Pashtoon of Jand Taghal Khel, sister's son of Fazal Qadir.

3. Mullah Abdul Qayum son of Maulvi Abdur Rehman, Pashtoon of Degan, sister's son of Fazal Qadir.

4. Abdul Rahim son of Maulvi Abdul Rehman of Kotka Akhmandin in Fatema Khel, sister's son of Fazal Qadir.

5. Ibrahim alias Changi son of Fazal Qadir, sister's son of Fazal Qadir.

6. Abdul Ali son of Mohammad Araf of Bhai Khan Maidan, sister's son of Fazal Qadir.

7. Rokhanzad son of Haji Amir Mukhtar Pashtoon of Sarmast Mira Khel, shelterer of Fazal Qadir.

8. Mohammad Sharif, } sons of Zober Khan, caste Qurashi of Sabbu Khel Khattak.
9. Mohammad Aslam, } Sister's sons of Fazal Qadir.
10. Hazrat Shah, }

Verified.

(Sd.) W. L. CAMPBELL,
Deputy Commissioner.

The 13th June 1931.

Please let me know why prisoner No. 8 is still shown as a political prisoner. The men who were arrested in connection with the Spina Tangi Show have been transfered under my order to the judicial lock-up.

(Sd.) C. H. GIDNEY,
Deputy Commissioner, Bannu.

The 8th November 1930.

Superintendent of Jail No. 1602, dated the 8th November 1930.

The prisoners arrested on 24th August were all transferred from the political hawalat to judicial lock-up under your orders.

This prisoner Gulla Khan was admitted on 11th September 1930 under the offence "Political." I did not know that the prisoner was arrested in connection with the Spina Tangi Show. I have shown him now in the judicial lock-up, under instructions received from the court of Treasury Officer on 6th November 1930.

(Sd.) *Superintendent of Jail.*

Received on 15th November 1930 4 P.M.

Seen. (Sd.) C. H. GIDNEY.

The 20th November 1930.

COPY.

FORM A.

List of Political Prisoners in the Political Hawalat in the Bannu District.

Serial No.	Name.	Father's name.	Tribe.	Reasons for detention.
1	Mina Din	Kipat	Wazir, Hathi Khel ..	Political.
2	Saifullah	Abdullah Khan ..	Do.	Do.
3	Hayatullah Khan ..	Gul Samand ..	Do.	Do.
4	Mada Mir Khan ..	Mohammad Khan ..	Do.	Do.
5	Saida Khan	Khawaja Mohammad Khan.	Do.	Do.
6	Niaz Budin	Darya Khan ..	Do.	Do.
7	Rasul Khan	Darya Khan ..	Pashtoon	Do.
8	Gulla Khan	Pur Dil	Do.	Do.
9	Abdullah Khan ..	Mir Ajab	Do.	Do.
10	Attaullah	Amir Khan.. ..	Quraishi	Do.
11	Mir Abbas Khan ..	Pauji Khan ..	Pashtoon	Do.
12	Piyao Khan	Said Amir	Wazir, Patal ..	Do.
13	Mohan Lal	Janam Das ..	Hindoo	D. I. K.
14	Chela Ram	Kallu Ram ..	Hindoo	D. I. K.

Yesterday when the Deputy Commissioner inspected the jail the number of political prisoners was given to be 14 on the board.

Out of these 14 prisoners orders for the release of Nos. 1—6 have been issued and these will be released to-day.

No. 7. Rasul Khan has been arrested for harbouring Ayub Khan and Mirdad. The Police are investigating his case.

No. 8. Gulla Khan is Sirki Khel Wazir. He was wounded on 24th August 1930 in the engagement at Spina Tangi.

No. 9. Abdullah Khan has been arrested for having carried away a Government rifle.

No. 10. Attaullah is the man who was spreading agitation in Mahsud and Wazir countries.

No. 11. Mir Abbas is the brother of Mohibullah alias Maithal, Hathi Khel who had fired at the car of Mr. Dundas on 24th August 1930.

No. 12. Piyao Khan is Hathi Khel and is said to have been arrested in connection with disturbance of Spina Tangi.

Nos. 13 and 14 are Hindus. I do not know anything about them. They are said to have been sent from D. I. Khan District.

Precis No. 25.

PESHAWAR DISTRICT.

Case No. 316/2 of 1929.

(Village Bhanamari, District Peshawar). King Emperor *versus* Monohar Lal and Radha Kishen, and

Case No. 317/2 of 1929.

(Village Bhanamari, District Peshawar). King Emperor *versus* Radha Kishen, Saida Jan and others.

The facts of the two cases noted above are fully set out in the order of the Deputy Commissioner, Peshawar, dated the 3rd January 1930, making a reference to a jirga. The orders may be reproduced in extenso.

" This order deals with two cases of murder which, though committed on different dates, are alleged by the prosecution to be the result of a single conspiracy. The important facts are as follows :—

" On the night of the 12th/13th July 1929 one Jai Ram Gar, a Hindu Engineer employed in the factory of Rai Bahadur Lala Harji Mal, was murdered in his quarter at the factory when sleeping in his courtyard. The crime was discovered early the following morning by one Jeth Singh, a Hindu shop-keeper, who occupied the neighbouring quarter as a tenant of the factory proprietors. Jeth Singh was also sleeping in his courtyard divided from that of Jai Ram Gar by a single partition. When he woke in the morning, he went into his room and found that several boxes containing his property had been removed. The connecting door with Jai Ram Gar's quarter was also open. On going through into Jai Ram Gar's quarter he found his boxes and other boxes of Jai Ram Gar lying open, and in the courtyard Jai Ram Gar was lying on his bed dead. Medical evidence shows that death was caused by severe blows with a heavy blunt weapon on the head, and suggests that death had taken place sometime before midnight. Jeth Singh aroused Jai Ram Gar's servant, who was sleeping on the roof of the quarter, and the alarm was given. The police investigation merely found that one Manohar Lal, who is also employed in the factory, had been sleeping on the roof until 2 A.M., during the night, when he had gone down to the factory to take his turn of work in place of Onkar, the servant of Jai Ram Gar. Onkar had duly woken up Manohar Lal and taken his place on the roof. Neither of these persons admit having seen or heard anything of the murder, but suspicion fell upon Manohar Lal for reasons that will be explained lower down. It was also established that access to the place where Jai Ram Gar was killed could only have been had by some one living in the factory or admitted thereto by an inmate. A *pagri* was found tied to the wall outside the factory as if to suggest that the murderer had climbed up by that route; but since it was proved that this *pagri* belonged to Jai Ram Gar himself, this was regarded by the Police as a deliberately false clue. The Police finally formed the theory that the murder was committed by Manohar Lal, with possibly some assistance from other factory employees, at the instance of one Radha Kishen, who had been previously employed as Manager of the factory. The only evidence against Radha Kishen was the statement of his late employer, Lala Bashesher Nath, owner of the factory, that they had parted on bad terms and that Radha Kishen had since been trying to harm Lala Bashesher Nath and to stop the working of the factory. Manohar Lal is connected with Radha Kishen, and it is suggested that the latter instigated the murder of Jai Ram Gar in order to terrorise the factory employees and to prevent the proprietor from securing labour. There was also one additional clue against Manohar Lal in that a finger print, which is identified by the Phillaur expert as that of Manohar Lal, was discovered on one of the opened boxes in Jai Ram Gar's room. Manohar Lal could give no explanation of this finger mark, and he was arrested by the Police on the 2nd of August. On the 1st August, the small daughter, aged about 8 years, of Krishen Lal, who had been Manager of the factory since the 23rd June, disappeared. She was last seen in the evening when her father had left her at the factory and she had been subsequently despatched to her home in the City by Gurbakhsh Singh, another employee at the factory. Gurbakhsh Singh states that he sent her in the charge of Said Jan, a factory labourer, with whom she had previous acquaintance. In spite of an extensive search for the girl, no trace was found until the 4th of August, when her corpse was found lying in a cemetery just outside the City. Medical evidence showed that her throat had been cut and other minor injuries inflicted. Said Jan denied all knowledge of the matter and said he had never been entrusted with charge of the child. However, on the 10th August, one Mohammad Gul, another employee in the factory, made a statement to a Magistrate in the form of a confession. In this statement he said that he and Khan Bahadur, Ghulam Gul and Saida Jan, all labourers, had been approached by a Hindu, brother of Manohar Lal, accused in the first case. This Hindu had offered them Rs. 500 to take the girl and kill her, and that in order to earn this reward the four of them had taken the girl and murdered her. Although this confession appears to have been made in good faith and without any pressure, it was subsequently retracted in Court. Taking this crime with the other, the police again formed the theory that Radha Kishen was the moving spirit and had offered money through Devi Dass, brother of Manohar Lal, to secure the murder of Kishen Lal's daughter. In this case also the motive was to ruin Lala Bashesher Nath's business and to prevent him from keeping any manager for the factory.

" It must be admitted at once that there is no possibility of a Judicial Court arriving at a verdict of guilty on the evidence available. There is, however, no conceiveable motive for these two murders, except that put forward by the Prosecution. In my opinion a strong Jirga will be able to appraise the available evidence and further sources of information may also be open to them. The persons accused are all liable to be tried under section 11, F. C. R., since Radha Kishen, although he now claims to be resident of Campbellpore in the Punjab, was actually born in the Mardan Sub-Sivision and lived there for the first few years of his life. I, therefore, order under section 11 F. C. R. that the case of Jai Ram Gar's murder may be referred to jirga for decision of the following question :—

" Did Manohar Lal actually murder Jai Ram Gar or assist in the crime ? if so, did he do so at the instigation of Radha Kishen ?"

" The following Jirga is appointed without valid objection on the part of the accused :—

1. K. S. Sheikh Khuda Bakhsh.
2. K. B. Seth Karam Illahi.
3. K. B. Ghulam Hassan Khan.
4. R. S. Lala Mehr Chand Khanna.
5. Sardar Naranjan Singh.
6. R. S. Lala Ram Chand of Risalpur."

It should be noted that Radha Kishen was, at the time when the murder was committed, residing in Cambellpore in the Punjab. He was brought under arrest to Peshawar, when proceedings were started against him. During the time he was employed in the factory of Lala Basheshar Nath, he, of course, lived there for several years. He objected to being tried under the Frontier Crimes Regulation, but his objection was over-ruled on the ground that he had spent part of his childhood in this province with a relative.

It was admitted, as will be seen from the order quoted above, that there was absolutely no evidence to connect Radha Kishen with any of the two murders. The only motive that was suggested was that he had been dismissed by Basheshar Nath, who refused to re-employ him in spite of Radha Kishen's entreaties. The jirga observed in one of the two cases as follows :—

"Although it appears curious that a man should commit murder to obtain an employment, he (Radha Kishen) has already been badnamed twice for committing such crimes. One file, relating to the murder of Hari Ram, is also existing. Also, there is a general rumour about him that he is a dangerous man. An idea also occurs as to why Jai Ram Gar was selected for this murder. One reason for this is that he had a previous enmity with Radha Kishen.

Once he was transferred from Kasur to Peshawar, but he refused to work under Radha Kishen and left work and went away. Moreover, Jai Ram Gar's house was open and he had no family with him. The other employees live in closed houses with their families. "

In the other case they say :—

" The ring-leader is Radha Kishen, a head-strong fellow. He had no enmity with Basheshar Nath, and the latter dismissed Radha Kishen from service as he was not useful. It is a general rumour both in the city and in 'ilaka' that, before this, two murders were committed by the conspiracy of Radha Kishen. He caused the death of one Charanjit Lal, goldsmith, by giving him poison. He (Charanjit Lal) was a rich man. Thus Radha Kishen is in possession of his wealth and wife. The second murder of Hari Ram was committed at the conspiracy of Radha Kishen. The deceased's mother is crying upto this day that her son has been murdered by the conspiracy of Radha Kishen. The betrothal of Ganga Bishan's daughter was arranged by Radha Kishen for his son and this was cancelled due to the strong-headedness of the latter. In this conection also Radha Kishen has written many letters wherein he threatened the heirs of the girl of murder. Fakir Chand, son of Ganga Bishen, has produced two letters—attached herewith on file. In the murder of Jai Ram Gar, Krishan Lal gave evidence against Manohar Lal and this act enraged Radha Kishen much and he proposed the murder of Krishen Lal's daughter—which could easily be committed because the girl Mussamat Bimla was acquainted with Saida Jan and Ghulam Gul. She was aged 6-7 years....". Accused Saida Jan and Ghulam Gul made certain confessions in which they implicated certain persons. Radha Kishen's name was, however, not mentioned. As regards the accused Saida Jan and Ghulam Gul the jirga observed that they " are relatives and Khan Bahadur was an employee in the factory and was dismissed from the service at the proposal of Krishan Lal. We do not admit the admission of the crime by Nano to be correct. Also, there is no evidence against Nano. We, therefore, hold him to be innocent. Similarly, there is no proof against Devi Dass excepting this that he is the brother of Manohar Lal.....Radha Kishen, Saida Jan, Ghulam and Khan Bahadur are the guilty persons."

Radha Kishen and Manohar Lal in one case and Radha Kishen and Saida Jan and Ghulam Gul in the other were convicted and sentenced to 14 years' rigorous imprisonment.

There was some evidence, circumstantial or that afforded by the incriminating statements of Saida Jan and Ghulam Gul, but there was absolutely no evidence against Radha Kishen. Every passage occurring in the finding of the jirga which can give indication of any evidence against Radha Kishen has been quoted. He may or may not be guilty, but the finding depends on a purely speculative theory, *viz.*, that he had been dismissed by Basheshar Nath, who refused to reinstate him, and that in consequence of this enmity he caused the death of Jai Ram Gar in order to injure the business of Basheshar Nath, and that he again caused the death of Krishna Lal's daughter, a view which found favour partly because Krishen Lal gave evidence against Manohar Lal. The jirga seems to have been greatly influenced by what was rumoured as regards certain other murders and affairs which were in some way attributed to Radha Kishen. As the murders could not be accounted for on any other theory the Deputy Commissioner accepted the verdict. It was not a case of circumstantial evidence but one which rested on nothing but a theory.

APPENDIX IV.

(1) The first Frontier Crimes Regulation of 1871.
(2) Regulation No. III of 1901.
(3) Regulation No. IV of 1901.
(4) Regulation No. IV of 1922.
(5) Regulation No. III of 1931.

APPENDIX IV (1).

The Frontier Crimes Regulation of 1871.

RULES PROPOSED FOR THE DISTRICTS OF PESHAWAR, KOHAT, BUNNOO, DERA ISMAIL KHAN AND DERA GHAZI KHAN, UNDER ACT XXXII, VIC., CAP. 3.

1. In the event of any frontier tribe acting in a hostile or unfriendly manner to the British Government, it shall be lawful for the Deputy Commissioner, subject to the sanction of he Commissioner, to detain all or any members of the said tribe, and to detain or confiscate their property ; to debar members of the tribe from access into British territory, and to prohibit British subjects from all intercourse with such tribe.

2. No new hamlet, village, tower, or walled enclosure shall be erected without the consent of the Commissioner of the Division, who shall have power to prohibit the erection thereof if deemed necessary. In the event of the Commissioner prohibiting such erection, he must record the grounds of his decision.

3. The Deputy Commissioner, with the concurrence of the Commissioner, may impose fines on village communities, the inhabitants of which, after due enquiry, are found to be guilty of colluding with or harbouring criminals, or combining to suppress evidence in criminal cases :

Provided that when the fine imposed shall exceed one-half of the year's revenue of the village, the case shall be referred for sanction to the local Government.

All fines imposed under this section shall be recoverable, in default of payment, in the same manner as arrears of land revenue.

4. When any person is known or believed to have a blood feud or other cause of quarrel likely to lead to bloodshed with parties beyond the border, the Deputy Commissioner may require such person to reside beyond the limits of the territory to which these rules apply, or in such place within the territory as he may deem desirable :

Provided that if such person be a resident of the village, hamlet, or place from which he is required to remove, the sanction of the local Government be obtained.

5. Whenever it may be expedient on military grounds, it shall be lawful for the local Government to direct the removal of any village on the immediate border to another site.

6. When a person is accused of murder or other heinous offence, and sufficient proof is not forthcoming for judicial conviction, the Deputy Commissioner may cause the case to be referred to the decision of elders convened according to Pathan or Belooch usage, and cause such decision to be carried into effect as if it were a sentence of Court: provided such sentence shall extend only to the infliction of a fine on the convicted party.

7. Section 445B of Act VII of 1869 and the last clause of Section 497 of the Indian Penal Code* shall have no force in the districts to which these rules apply.

* In such case the wife shall not be punishable as an abetter.

8. Section 209 of Act VIII of 1869 shall be read as if the clause noted in the margin were omitted.

Specified in column 7 of the 2nd Schedule as hereto annexed as triable by the Court of Session.

9. It shall be lawful for the Lieutenant-Governor to issue rules and orders from time to time, prescribing and regulating the duties of the inhabitants in regard to the protection of the border from raids, the prevention and detection of crime, and the carrying and possession of arms.

10. Persons offending against any of the rules here laid down, or against any of the rules and orders issued by the Lieutenant-Governor under the preceding section, shall be liable, on conviction, to imprisonment, rigorous or simple, which may extend to six months, or fine, which may extend to Rs. 1,000.

11. In every district a register shall be kept up of all cases dealt with under these rules, and a statement of all such cases shall be submitted half-yearly to the local Government.

12. The Police Act V of 1861 may, at the discretion of the Lieutenant-Governor, be extended to the districts of Peshawar, Kohat, Bunnoo, Dera Ismail Khan and Dera Ghazi Khan, subject to the limitations specified below :—

(*a*) Such portion of the duties of the Inspector-General of Police as refer to inspection, pay, and clothing shall be performed by the Inspector-General of Police, Punjab.

(*b*) All other duties now performed by the Inspector-General shall be performed by the Commissioner, who shall be held to possess the powers of an Inspector-General, within the limits of his own division.

(*c*) Deputy Commissioners shall be held to be *ex-officio* Deputy Inspectors-General of Police within the limits of their respective districts, without prejudice to their exercise of all the powers of a Magistrate.

APPENDIX IV (2).

The Frontier Crimes Regulation, 1901 (III of 1901) with collection of notifications and orders issued thereunder or pertaining thereto.

CONTENTS.

THE FRONTIER CRIMES REGULATION, 1901 (III OF 1901).

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SECTIONS.

REGULATION No. III OF 1901.

(Received the assent of the Governor-General on the 18th September 1901, published in the "Gazette of India" on the 21st idem, and in the "Punjab Government Gazette" on the 3rd October 1901.)

A REGULATION FURTHER TO PROVIDE FOR THE SUPPRESSION OF CRIME IN CERTAIN FRONTIER DISTRICTS.

WHEREAS it is expedient further to provide for the suppression of crime in certain frontier district ; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title, commencement and extent.

1. (*1*) This Regulation may be called the Frontier Crimes Regulation, 1901 ; and

(*2*) It shall come into force at once.

(*3*) It extends to the districts of Peshawar, Kohat, Hazara, Bannu, Dera Ismail Khan and Dera Ghazi Khan; but the Local Government may, by notification in the local official Gazette, exempt any local area from the operation of all or any of its provisions.

No local area has been exempted (see page 60).

(*4*) Sections 1 to 5, 10, 20, 21, 26 to 28, 31, 32, 36, 37, 56, and 60 to 64 are of general application, but the remaining sections may be enforced, in whole or in part, as the case may be, only against Pathans and Biluchis, and against such other classes as the Local Government, with the previous sanction of the Governor-General in Council, may, by notification in the local official Gazette, declare to be subject thereto.

For notification under this sub-section see page 560.

(*5*) A notification under sub-section (*4*) may declare a specified class only to be subject to all or any of the provisions of this Regulation in a district or part of a district.

No declaration under this sub-section has been made—see page 61.

Explanation.—The word "class", as used in sub-sections (*4*) and (*5*), includes any persons who may be collectively described in a notification under this section as persons subject to all or any of the provisions of this Regulation.

Definitions.

2. In this Regulation, unless there is anything repugnant in the subject or context,—

(*a*) "Council of Elders" means a Council of three or more persons convened according to the Pathan, Biluch or other usage, as the Deputy Commissioner may in each case direct ; and

(*b*) "Deputy Commissioner" includes any Magistrate of the first class appointed by the Deputy Commissioner by order, in writing, to exercise all or any of the functions or powers specified in the first part of the First Schedule, and also any Magistrate appointed by the Local Government to exercise all or any of such functions or powers.

Relation of Regulation to other enactments.

3. (*1*) The provisions of this Regulation shall take effect in cases to which they apply, notwithstanding anything in any other enactment.

(*2*) The powers conferred by this Regulation may be exercised in addition to any powers conferred by or under any other enactment, and, where the contrary is not expressed or implied other enactments in force in any place in which all or any of the provisions of this Regulation are for the time being in force shall, so far as may be, apply to cases dealt with in that place under this Regulation.

CHAPTER II.

POWERS OF COURTS AND OFFICERS.

Additional District Magistrates.

4. (*1*) In any district in the whole or any part of which all or any of the provisions of this Regulation are for the time being in force, the Local Government may appoint any Magistrate or Magistrates of the first class to be an Additional District Magistrate or Additional District Magistrates without any limit of time.

(2) Every Additional District Magistrate so appointed shal. have all the ordinary powers of a District Magistrate specified in the fifth part of the Third Schedule to the Code of Criminal Procedure, 1898. V of 1898.

(3) When exercising any of the powers of a Deputy Commissioner under this Regulation, an Additional District Magistrate shall be deemed, for the purposes of this Regulation, to be the Deputy Commissioner.

(4) Every Additional District Magistrate shall exercise his powers in subordination to the District Magistrate, and in such cases or classes of cases, and within such local limits, as the District Magistrate may, by order in writing, direct.

Power of District Magistrate to withdraw or recall cases.

5. (1) The District Magistrate may withdraw any case from or recall any case which he has made over to an Additional District Magistrate, whether the Additional District Magistrate is exercising jurisdiction with respect to the case as a Magistrate or as a Deputy Commissioner.

(2) If the case may, under the Code of Criminal Procedure, 1898, be referred to another Magistrate competent to inquire into or try it, the District Magistrate may, instead of disposing of the case himself, refer it to such other Magistrate for inquiry or trial, as the case may be. V. of 1898.

Power to pass sentence of whipping in certain cases.

6. Where any person against whom, under Section 1, sub-section (4), this section may for the time being be enforced is convicted by a Cr minal Court of an offence punishable under any of the following sections of the Indian Penal Code, namely, Sections 304, 307,324, 325, 326, 376,377, 382, 392 to 399, 427, 428, 429, 435, 436 and 448 to 460, the Court may, subject to the provisions of Section 393 of the Code of Criminal Procedure, 1898, pass upon him a sentence of whipping in addition to any other punishment to which he may be sentenced. XLV of 1860. XV of 1898

Tender of Pardon to accomplice.

7. Section 337 of the Code of Criminal Procedure, 1898, shall, for the purposes of this Regulation, be construed as if :—

** Amendment of Section 7 as effected by the Frontier Crimes (Amendment) Regulation No. VI of 1926.*

(a) the words in sub-section (1) " triable exclusively by the High Court or Court of Session, or any offence punishable with imprisonment which may extend to ten years, or any offence punishable under Section 211 of the Indian Penal Code with imprisonment which may extend to seven years, or any offence under any of the following sections of the Indian Penal Code, namely, Sections 216-A, 369, 401, 435 and 447-A " and XLV of 1860. XLV of 1860.

(b) the whole of sub-section 2 (A),

were omitted.

CHAPTER III.

COUNCILS OF ELDERS.

Civil reference to Council of Elders.

8. (1) Where the Deputy Commissioner is satisfied, from a Police report or other information that a dispute exists which is likely to cause a blood-feud, or murder, or culpable homicide not amounting to murder, or mischief, or a breach of the peace, or in which either or any of the parties belongs to a frontier tribe, he may if he considers that the settlement thereof in the manner provided by this section will tend to prevent or terminate the consequences anticipated, and if a suit is not pending in respect of the dispute, make an order, in writing, stating the grounds of his being so satisfied referring the dispute to a Council of Elders, and requiring the Council to come to a finding on the matters in dispute after making such inquiry as may be necessary and after hearing the parties. The members of the Council of Elders shall, in each case, be nominated and appointed by the Deputy Commissioner.

For rules regarding the working of this section see page 36.

For instructions regarding the use of this section see paragraph 4 (d) of the circular reproduced at page 66 and the memo. at page 68.

(2) The order of reference made under sub-section (1) shall state the matter or matters on which the finding of the Council of Elders is required.

(3) On receipt of the finding of the Council of Elders under this section, the Deputy Commissioner may—

(a) remand the case to the Council for a further finding ; or

(b) refer the case to a second Council ; or

(c) refer the parties to the Civil Court ; or

(d) pass a decree in accordance with the finding of the Council or of not less than three-fourths of the members thereof on any matters stated in the reference ; or

(e) declare that further proceedings under this section are not required.

9. A decree passed under Section 8, sub-section (*3*), clause (*d*), shall not give effect to any finding or part of a finding which, in the opinion of the Deputy Commissioner, is contrary to good conscience or public policy, but shall—

Effect of decree on finding of Council.

(*a*) be a final settlement of the case so far as the decree relates to any matter stated in the reference, although other matters therein stated may remain undisposed of; and

(*b*) have, to that extent and subject to the provisions of this Regulation with respect to revision, the same effect as a decree of a Civil Court of ultimate resort, and be enforced by the Deputy Commissioner in the same manner as a decree of such a Court may be enforced.

For instructions regarding execution of decrees see the rules at pages 36 and 37, and the memo. at page 68.

10. No Civil Court shall take cognizance of any claim with respect to which the Deputy Commissioner has proceeded under Section 8, sub-section (*3*), clause (*a*), clause (*b*), or clause (*d*).

Restriction on jurisdiction of Civil Courts.

Criminal references to Councils of Elders.

11. (*1*) Where, in the opinion of the Commissioner or Deputy Commissioner, it is inexpedient that the question of the guilt or innocence of any person or persons accused of any offence, or of any of several persons so accused, should be tried by a Court of any of the classes mentioned in Section 6 of the Code of Criminal Procedure, 1898, the Deputy Commissioner may, or, if the Commissioner so directs, shall, by order, in writing, refer the question, to the decision of a Council of Elders, and require the Council to come to a finding on the question after such inquiry as may be necessary and after hearing the accused person. The members of the Council of Elders shall, in each case, be nominated and appointed by the Deputy Commissioner.

For instructions regarding the use of this section see paragraph 4 of the circular reproduced at page 61.

V of 1898.

(*2*) Where a reference to a Council of Elders is made under sub-section (*1*) and the members of the Council have been nominated the names of the members so nominated shall, as soon as may be, be communicated to the accused person, and any objection which he may then make to the nomination of any such member shall be recorded. The Deputy Commissioner shall consider every objection made by an accused person under this sub-section, and may, in his discretion, either accept or reject the objection, provided that in the latter case, he shall record his reasons for so doing. The Deputy Commissioner, shall after disposing of any objection made by the accused person, appoint the members of the Council.

(*3*) On receipt of the finding of the Council of Elders under this section, the Deputy Commissioner may—

(*a*) remand the question to the Council for a further finding; or

(*b*) refer the question to a second Council; or

See the rule at page 39.

(*c*) acquit or discharge the accused person or persons or any of them; or

(*d*) in accordance with the finding on any matter of fact of the Council, or of not less than three-fourths of the member thereof, convict the accused person or persons, or any of them, of any offence of which the facts so found show him or them to be guilty:

Regarding punishment see paragraph 4 (b) of the circular reproduced at page 65.

Provided that a person discharged under clause (*c*) shall not be liable to be retried for any offence arising out of the same of facts after the expiry of two years from the date of such discharge.

12. (*1*) Where the Deputy Commissioner convicts a person under Section 11, sub-section (*3*) clause (*d*), he may pass upon him any sentence of fine.

Punishment on conviction on finding of Council.

(*2*) Where the Deputy Commissioner so convicts a person of an offence mentioned in the Second Schedule, he may whatever may be the punishment prescribed for the offence, sentence the person, in lieu of or in addition to fine, to be imprisoned for a term which may extend to seven years, or, subject to the provisions of Section 393 of the Code of Criminal Procedure, 1898, to be whipped, or to be whipped and imprisoned for a term which may extend to five years, or to be transported for a term which may extend to seven years; and where he so convicts a person of an offence punishable with transportation or with imprisonment for a term exceeding seven years, he may, subject to confirmation by the Commissioner, sentence the person to a term either of transportation or of imprisonment exceeding seven years but not exceeding fourteen years:

V of 1898.

Provided, first, that a sentence of whipping shall not be passed on any person so convicted of an offence under Sections 121, 121-A, 122, 123, 124-A, 125, 126, 127, 144, 150, 216, 216-A, 400, 401, 402, 494 or 495 of the Indian Penal Code : XLV of 1860.

Provided, secondly, that a sentence of transportation or imprisonment for an offence shall not be for a longer term than that (if any) prescribed for the offence ; and

Provided, thirdly, that a sentence of transportation shall not be passed for an offence which is not punishable with transportation or with imprisonment for a term which may extend to seven years or more.

Manner of enforcing sentences.

13. (*1*) Any sentence passed under Section 12 shall be executed in the manner provided for the execution of sentence passed by a Court of any of the classes mentioned in Section 6 of the Code of Criminal Procedure, 1898. V of 1898.

(*2*) For the purposes of Sections 64 to 67 of the Indian Penal Code in reference to a sentence under Section 12 of this Regulation— XLV of 1860.

(*a*) an offence punishable with death or transportation for life shall be deemed to be punishable with rigorous imprisonment for a term which may extend to ten years ; and

(*b*) the imprisonment in default of payment of fine may be rigorous or simple at the discretion of the Deputy Commissioner.

Time for exercising power of reference to Council of Elders.

14. The powers conferred by Section 11 on the Commissioner and Deputy Commissioner respectively, may be exercised by them, in cases committed to the Court of Session at any time before the trial before that Court has commenced, and, in cases pending before any Court inferior to the court of Session, at any time before an order of conviction or acquittal has been made.

Motion by Public Prosecutor in view to reference to Council of Elders.

15. (*1*) In any trial before a Court of Session, the Public Prosecutor may when instructed, in writing, in that behalf, by the Commissioner or Deputy Commissioner, at any time before an order of conviction or acquittal has been made with respect to any accused person, withdraw from the prosecution of such person in order that the case may be referred to a Council of Elders.

(*2*) The Sessions Judge shall thereupon stay proceedings with respect to such person and the Deputy Commissioner shall refer the case to a Council of Elders.

Case of persons jointly accused of an offence.

16. The powers conferred by Section 11, as limited by Section 14, may be exercised against, and the withdrawal of a prosecution under Section 15 may have reference to, one or some only of two or more persons jointly accused of an offence.

Power to set aside orders making or refusing to make references to Councils of Elders.

17. The Deputy Commissioner may, if he thinks fit at any time reconsider and set aside any order of the Deputy Commissioner under this Regulation—

(*a*) directing a reference to a Council of Elders, or

(*b*) refusing to make such a reference.

Recommendations of Councils of Elders.

18. (*1*) Where a Council of Elders to which a reference has been made under this Regulation, makes any recommendation to which effect might be given if it were a finding on a matter or question referred to the Council under this Regulation, the Deputy Commissioner may, if the recommendation affects a person mentioned in the order of reference and is relevant to the matter or question actually referred, deal with the recommendation or any part of it as if it were a finding under Section 8 or Section 11 :

Provided that no decree or sentence may be passed on any such recommendation as aforesaid against any person who has not had the claim or charge fully explained to him and been given an opportunity of entering upon his defence in regard thereto.

(*2*) Where the Deputy Commissioner deals with a recommendation under sub-section (*1*), he may pass any such decree as is authorised by Seection 8, or any such sentence as is authorized by Section 12, sub-section (*1*), and the decree or sentence shall have the same effect and the enfoced in the same manner as if it were a decree or sentence passed under Section 8 or Section 12, sub-section (*1*), as the case may be.

Record of Deputy Commissioner.

19. (*1*) Where the Deputy Commissioner passes, under this chapter, a sentence of fine exceeding two hundred rupees, or of imprisonment for a term exceeding three months, or of transportation, he shall make a record of the facts of the case, of the offence committed and of his reasons for passing the sentence.

(2) The record shall be made by the Deputy Commissioner in English and in his own hand unless for any sufficient reason he is prevented from so making it, in which case he shall record the reason of his inability and shall cause the record to be made from his dictation in open Court.

XIV of 1882. V of 1898. Attendance of parties and witnesses before Deputy Commissioner or Council of Elders.

20. Where a reference is made to a Council of Elders under this chapter, the Deputy Commissioner may exercise all or any of the powers conferred by the Code of Civil Procedure and the Code of Criminal Procedure, 1898, respectively, as the case may be, for the purpose of compelling the attendance, before himself or the Council of Elders, of the parties and witnesses, or any of them, in any case and at any stage of the proceedings.

CHAPTER IV.

PENALTIES.

Blockade of hostile or unfriendly tribe.

21. In the event of any frontier tribe, or of any section or members of such tribe, acting in a hostile or unfriendly manner towards the British Government or towards persons residing within British India, the Deputy Commissioner may, with the previous sanction of the Commissioner, by order in writing, direct:

(a) the seizure, wherever, they may be found, of all or any of the members of such tribe and of all or any property belonging to them or any of them;

For instructions regarding the use of the 'political hava'at' see the memo. at page 68.

(b) the detention in safe custody of any person or property so seized; and

(c) the confiscation of any such property;

and may, with the like sanction, by public proclamation:

(d) debar all or any members of the tribe from all access into British India; and

(e) prohibit all or any persons within the limits of British India from all intercourse or communication of any kind whatsoever, or of any specified kind or kinds, with such tribe or any section or members thereof.

Fines on communities accessory to crime.

22. Where, from the circumstances, of any case, there appears to be good reason to believe that the inhabitants of any village, or part of a village, or any or them have—

(a) connived at, or in any way abetted the commission of an offence; or

(b) failed to render all assistance in their power to discover the offenders or to effect their arrest; or

(c) connived at the escape of, or harboured, any offender or person suspected of having taken part in the commission of an offence; or

(d) combined to suppress material evidence of the commission of an offence;

the Deputy Commissioner may, with the previous sanction of the Commissoner, impose a fine on the inhabitants of such village or part of a village, or any of them, as a whole.

Fines on communities where murder or culpable homicide is committed or attempted.

23. Where, within the area occupied by a village community or part of a village community, a person is dangerously or fatally wounded by an unlawful act, or the body is found of a person believed to have been unlawfully killed, the members of the village community or part thereof shall be deemed to have committed an offence under Section 22, unless the headmen of the village, community or part thereof can show that the members thereof:

(a) had not an opportunity of preventing the offence or arresting the offender; or

(b) have used all reasonable means to bring the offender to justice.

Recovery of fines.

24. Fines imposed under Section 22 shall, in default of payment, be recoverable as if they were arrears of land revenue due by the members of the community or part thereof upon whom the fine is imposed.

Forfeiture of remissions of revenue, etc., in the case of communities and persons accessory to crime.

25. Where a village community or part of a village community has become liable to fine under Section 22, it shall further be liable to forfeit, in whole or in part and for a term or in perpetuity, and remission of land revenue of which it may be in joint enjoyment, and the members of the village community or part thereof, as the case may be, shall in like manner be liable severally to forfeit any assignment or remission of land revenue or allowance paid out of public funds which they, or any of them, may enjoy.

Forfeiture of public emoluments, etc., of persons guilty of serious offences or of conniving at crime.

26. Where it is shown, to the satisfaction of the Deputy Commissioner, that any person who is in the enjoyment of an assignment or remission of land revenue or allowance payable out of public funds, has been guilty of a serious offence, or has colluded with or harboured any criminal, or has suppressed material evidence of the commission of any offence, or has failed, on the investigation of any criminal case, to render loyal and proper assistance to the authorities to the best of his ability, the Deputy Commissioner may, in addition to any other penalty to which such person may be liable under any law for the time being in force, direct the forfeiture, in whole or in part and for term in perpetuity, of such assignment or remission of land revenue or allowance, as the case may.

Explanation.—For the purposes of this section the expression "serious offence" means any offence punishable with transportation or with imprisonment for a term which may extend to three years or more.

Power to direct forfeiture.

27. Forfeiture under Section 25 or Section 26 may be adjudged by order of the Deputy Commissioner for a term which may extend to three years, and by order of the Commissioner for any longer term or in perpetuity.

Powers of Local Government saved.

28. Nothing in Sections 25, 26 and 27 shall affect the powers of the Local Government with respect to the grant, continuance or forfeiture, in whole or in part, of any assignment or remission of land revenue or of any allowance paid out of public funds.

Preparation to commit certain offence.

For instructions regarding this section see page 61.

29. Where a person is found carrying arms in such manner or in such circumstances as to afford just grounds of suspicion that the arms are being carried by him with intent to use them for an unlawful purpose, and that person has taken precautions to elude observation or evade arrest, or is found after sunset and before sunrise within the limits of any military camp or cantonment or of any municipality, he shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both, and the arms carried by him may be confiscated.

Adultery.

30. (*1*) A married woman who, knowingly and by her own consent, has sexual intercourse with any man who is not her husband, is guilty of the offence of adultery, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

(*2*) Cognizance shall not be taken of an offence under this section unless a complaint has been made by the husband of the women, or, in his absence, by a person who had care of the women on his behalf at the time when the offence was committed.

CHAPTER V.

PREVENTIVE AND OTHER AUTHORITY AND JURISDICTION.

For powers of a Deputy Commissioner under this section. See page 62.

Power to prohibit erection of new villages or towers on Frontier.

31. (*1*) No new hamlet, village habitation, tower or walled enclosure shall, without the previous sanction, in writing, of the Commissioner, who may either grant or refuse such sanction as he thinks fit, be erected at any place within five miles of the frontier of British India.

(*2*) Where the Commissioner refuses to sanction the erection of any such hamlet, village habitation, tower or walled enclosure, as the case may be, he shall record his reasons for so doing.

Power to direct removal of villages.

32. Where is it expedient on military grounds the Local Government may, by order in writing, direct the removal of any village situate in close proximity to the frontier of British India to any other site within five miles of the original site, and award to the inhabitants such compensation for any loss which may have been occasioned to them by the removal of their village as, in the opinion of the Local Government, is just.

Regulation of *hujras* and *chauks*.

33. (*1*) No building of the kind commonly known as a *hujra* or *chauk*, and no building intended to be used as a *hujra* or *chauk*, shall be erected or built, and no existing building not now used as a *hujra* or *chauk* shall at any time be used as such, without the previous sanction, in writing, of the Deputy Commissioner.

(*2*) Whoever contravenes the provisions of sub-section (*1*) shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

Demolition of buildings used by robbers, etc.

34. (*1*) Where the Deputy Commissioner is satisfied that any building is habitually used as a meeting place by robbers, house-breakers, thieves or bad characters or for the purpose of gambling, he may, by order, in writing, prohibit the owner or occupier thereof from so using

such building, and, if the order is not obeyed, may, by a like order, direct that the building be demolished. Such further order shall be without prejudice to any punishment to which the owner or occupier of such building may, under any law for the time being in force, be liable for disobedience of the prohibitory order.

(2) No person shall be entitled to any compensation in respect of the demolition of any building under sub-section (1).

Naubati chaukidari system.

35. (1) Where, in the opinion of the Deputy Commissioner, the custom of providing for watch and ward by what are commonly known as *naubati chaukidars* exists in the case of any village community, and the village community or any part thereof fails to provide for the due performance of such service, or any member of the village community fails to perform his duty of watch and ward according to the customary rotation in respect of such duties, the Deputy Commissioner may impose a fine, which may extend to one hundred rupees in any one case, upon the village community or part or member thereof so failing as aforesaid.

(2) The provisions of Section 24 shall be applicable to the recovery of fines imposed on any village community or part thereof under this section.

(3) Where such custom as aforesaid has not existed or has fallen into disuse in any village Community, the Deputy Commissioner may, with the previous sanction of the Commissioner, by order, in writing, direct its introduction or revival, as the case may be; and thereupon the provisions of sub-section (1) shall apply in respect of the village community.

For rules regarding this section, see page 37 rule 4, and page 40.

Power to require persons to remove in certain cases.

36. Where, in the opinion of the Deputy Commissioner, any person:—

(a) is a dangerous fanatic; or

(b) belongs to a frontier tribe and has no ostensible means of subsistence or cannot give a satisfactory account of himself; or

(c) has a blood-feud; or

(d) has occasioned cause of quarrel likely to lead to bloodshed;

the Deputy Commissioner may, by order, in writing, require him to reside beyond the limits of the territories to which this Regulation extends, or at such place within the said territories as may be specified in the order:

Provided that, if the person has a fixed habitation in the place which the Deputy Commissioner requires him to leave, an order under this section shall not be made without the previous sanction of the Commissioner.

Penalty for breach of certain orders.

37. Whoever contravenes the provisions of Section 31, or disobeys an order under Section 21 or Section 32, or a prohibition under Section 34, or a requisition under Section 36, shall be punishable with imprisonment for a term which may extend to six months, and shall also be liable to fine which may extend to one thousand rupees.

Powers of arrest.

38. In any place in which all or any of the provisions of this Regulation are for the time being in force:—

(i) any private person may, without an order from a Magistrate and without a warrant arrest or cause to be arrested and make over or cause to be made over to a police officer, or take or cause to be taken to the nearest police station, any person who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned; and

V of 1898. (ii) Section 46 of the Code of Criminal Procedure, 1898, shall be read as if the following sub-section were added thereto, namely:—

"(4) But this section gives a right to cause the death of a person against whom those portions of the Frontier Crimes Regulation, 1901, which are not of general application, may be enforced:—

(a) if he is committing or attempting to commit an offence, or resisting or evading arrest, in such circumstances as to afford reasonable ground for believing that he intends to use arms to effect his purpose; or

(b) if a hue and cry has been raised against him of his having been concerned in any such offence as is specified in clause (a), or of his committing or attempting to commit an offence, or resisting or evading arrest, in such circumstances as are referred to in the said clause."

XLV of 1860.

Arrest without warrant in cases under Section 498, Indian Penal Code.

39. (1) Where there is reason to believe that a person has committed or attempted to commit an offence punishable under Section 498 of the Indian Penal Code, an officer in charge of a police station may, without an order from a

Magistrate and without a warrant, arrest that person on the requisition of the husband of the woman, or, in his absence, of a person having the care of her on his behalf, or in the absence of both the husband and any such person as last aforesaid from the village in which the woman resides, on the requisition of a headman of the village.

(2) A police officer making an arrest under sub-section (1) shall, without unnecessary delay, take or send the person arrested to the nearest Magistrate having jurisdiction.

(3) The Magistrate may, in default of bail being furnished to his satisfaction, detain the person arrested for such period, not exceeding fifteen days, as may be necessary to enable the husband, or, in his absence, a person who had care of the women on his behalf, to make a complaint.

Security and surveillance for the prevention of murder or culpable homcide or the dissemination of sedition.

40. (1) Where the Commissioner or the Deputy Commissioner is of opinion that it is necessary, for the purpose of preventing murder or culpable homicide not amounting to murder, or the dissemination of sedition, to require a person to execute a bond for good behaviour or for keeping the peace, as the case may be, he may order the person to execute a bond, with or without sureties, for his good behaviour or for keeping the peace, as the case may be, during such period, not exceeding three years, as the Commissioner or the Deputy Commissioner, as the case may be, may fix.

(2) The Deputy Commissioner may make an order under sub-section (1):—

(a) on the recommendation of a Council of Elders, or

(b) after enquiry as hereinafter provided.

(3) Where a person has been convicted in accordance with the finding of a Council of Elders of an offence mentioned in Section 106 of the Code of Criminal Procedure, 1898, or punishable under Section 302, Section 304, Section 307, or Section 308 of the Indian Penal Code, the Deputy Commissioner at the time of passing sentence, or the Commissioner at the time of revising the sentence, may make an order under sub-section (1) with respect to that person. **XLV of 1860.**

(4) Where the Deputy Commissioner makes an order under sub-section (1) on the recommendation of a Council of Elders, he shall record his reasons for acting on the recommendation.

(5) Where the Commissioner or the Deputy Commissioner is of opinion that sufficient grounds exist for making an order under sub-section (1), he may, either in lieu of, or in addition to, such order, by order, in writing, direct that the person concerned shall notify his residence and any change of residence in the manner prescribed by Section 565 of the Code of Criminal Procedure, 1898, during such term, not exceeding three years, as may be specified in the order. **V of 1898.**

Security from families or factions in case of blood-feud.

For instructions regarding the use of this section, see paragraph 4 (e) of the circular reproduced at page 66.

41. Where a blood-feud or other cause of quarrel likely to lead to bloodshed exists, or in the opinion of the Deputy Commissioner, is likely to arise between two families or factions, the Deputy Commissioner may, on the recommendation of a Council of Elders or after inquiry as hereinafter provided, order all or any of the members of both families or factions or of either family or faction to execute a bond, with or without sureties, for their good behaviour or for keeping the peace, as the case may be, during such period not exceeding three years, as he may fix.

Procedure in inquiry.

42. (1) An inquiry for the purposes of Section 40, sub-section (2), or Section 41, may be conducted, so far as may be necessary, out of court:

Provided that a person from whom it is proposed to require a bond under Section 40, or the principal members of a family or faction from which it is proposed to require a bond under Section 41, shall be given an opportunity of showing cause in Court why a bond should not be required, and of having his or their witnesses examined there, and of cross-examining any witness not called by himself or themselves who may testify there to the necessity or otherwise for the execution of a bond.

(2) Sections 112, 113, 115 and 117 of the Code of Criminal Procedure, 1898, shall not apply to an inquiry under this section, but the Deputy Commissioner shall record his order with the reasons for making it. **V of 1898.**

Breach of bond.

43. (1) A bond executed under Section 40 shall be liable to be forfeited, if the persons bound thereby to be of good behaviour or to keep the peace, as the case may be, commits or attempts to commit, or abets the commission of, any offence punishable with imprisonment.

(2) A bond executed under Section 41 shall be liable to be forfeited, if the person bound thereby to be of good behaviour or to keep the peace, as the case may be, commits or attempts to commit, or abets the commission of, any offence punishable with imprisonment in respect of any member of the opposite family or faction to which the bond related.

(3) If, while a bond executed under Section 41 is in force, the life of any member of either family or faction is unlawfully taken or attempted, the Deputy Commissioner may declare the bond of all or any of the members of the other family or faction and their sureties (if any) to be forfeited, unless it is shown to his satisfaction that the homicide or attempt was not committed by, or in consequence of the abetment of, any member of that family or faction.

Imprisonment in default of security.

44. (1) Where a person ordered to give security under Section 40 or Section 41 does not give security on or before the date on which the period for which the security is to be given commences, he shall be committed to prison, or, if he is already in prison, be detained in prison until that period expires, or until within that period he furnishes the required security.

(2) Imprisonment for failure to give security under this chapter may be rigorous or simple as the officer requiring the security directs in each case.

Length of imprisonment.

45. Where a person has suffered imprisonment for three years for failure to give security under Section 40 or Section 41, he shall be released, and shall not again be required to give security unless a fresh order is passed in accordance with the provisions of this chapter or of the Code of Criminal Procedure, 1898

V of 1898.

Further security.

46. (1) Where a person has, under the provisions of this chapter, given security or been imprisoned for failure to give security, he may be brought before the Deputy Commissioner, if, on the expiry of the period for which security was required to be given, the Deputy Commissioner so directs.

(2) Where the Deputy Commissioner thinks it necessary, for the purpose of preventing bloodshed, to require security for a further period from any person so brought before him, he shall record a proceeding to that effect.

(3) The proceeding may be founded on the facts on which the original order to give security was founded, and it shall not be necessary to prove any fresh facts to justify an order to give security for a further period under this section; but such an order, if passed, shall have the same effect and be enforced in the same manner as an original order to give security under Section 40 or Section 41.

(4) Notwithstanding anything in this section, no person shall suffer, for failure to give security under this chapter, continuous imprisonment for more than six years or, without the sanction of the Commissioner, for more than three years.

Modified application of Chapters VIII and XLII, Act V, 1898.

47. (1) Where, within the territories in which all or any of the provisions of this Regulation are for the time being in force, it is found necessary or expedient to take security under this Regulation from Pathans or Biluchis or any other classes against whom all or any of the provisions of Sections 40 to 46 may for the time being be enforced, the provisions of Chapters VIII and XLII of the Code of Criminal Procedure, 1898, shall be read as if for the words "High Court", "Court of Session" and "Sessions Judge", wherever they occur, the word "Commissioner" were substituted, and all references to any such Courts shall be deemed to refer to the Court of the Commissioner.

V of 1898.

(2) Subject to the provisions of sub-section (2) of Section 42 and sub-section (1) of this section, the provisions of the said chapters of the Code of Criminal Procedure, 1898, shall, so far as they are consistent therewith, be applicable to every proceeding under this chapter relating to the taking of security; but all applications for revision in respect to any such proceeding shall be made to, and be disposed of by, the Commissioner.

V of 1898.

CHAPTER VI.

APPEAL AND REVISION.

Appeals barred.

48. No appeal shall lie from any decision given, decree or sentence passed, order made, or act done, under any of the provisions of this Regulation.

Revision.

49. The Commissioner may call for the record of any proceeding under this Regulation and revise any decision, decree, sentence or order given, passed or made therein.

Powers in exercise of criminal revisional jurisdiction.

50. The Commissioner may, in the exercise of his revisional jurisdiction in any criminal proceeding, exercise the power to direct tender of pardon conferred by Section 338, and any of the powers conferred on an Appellate Court by Sections 195, 423, 426, 427 and 428 of the Code of Criminal Procedure, 1898, and may also enhance any sentence:

V of 1898.

Provided that nothing in this chapter shall be deemed to authorize the Commissioner to set aside the finding on any question of fact of a Council of Elders, where such finding has been accepted by the Deputy Commissioner, unless he is of opinion that there has been a material irregularity or defect in the proceedings or that the proceedings have been so conducted as to occasion a miscarriage of justice.

Sentences which may not be passed on revision.

51. No sentence shall be passed by the Commissioner in the exercise of his revisional jurisdiction which the Deputy Commissioner could not have passed under this Regulation.

Powers in exercise of civil revisional jurisdiction.

52. Nothing in this chapter shall be deemed to authorise the Commissioner to vary or set aside any decision, decree or order given, passed or made in any civil proceeding under this Regulation, unless he is of opinion that there has been a material irregularity or defect in the proceedings or that the proceedings have been so conducted as to occasion a miscarriage of justice, or that the decision, decree or order is contrary to good conscience or public policy.

Record of reasons.

53. Where, in the exercise of his revisional jurisdiction in any proceeding under this Regulation, the Commissioner varies or sets aside any decision, decree, sentence or order, he shall record his reasons for so doing.

Procedure where the decision, etc., to be revised was given by the Commissioner as Deputy Commissioner.

54. (*1*) The Commissioner shall not revise any decision, decree, sentence or order given, passed or made by himself in the capacity of Deputy Commissioner.

(*2*) Where any such decision, decree, sentence or order is brought to the notice of the Commissioner with a view to the exercise by him of his revisional jurisdiction in respect thereof under this Regulation, the Commissioner shall report the case to the Local Government, and it shall be disposed of by the Local Government or by such officer as the Local Government may appoint in that behalf.

Enforcement of orders made on revision.

55. Every order made by the Commissioner in exercise of his revisional jurisdiction shall be enforced as if it were an order of the Deputy Commissioner or District Magistrate, as the case may be, and the Deputy Commissioner or District Magistrate shall do all acts and things necessary to give effect thereto.

CHAPTER VII.

Supplemental Provisions.

Recovery of fines, etc. from relatives of person liable.

56. Where, by a decree passed under Section 8 or by a sentence passed under Section 12, any person belonging to a frontier tribe becomes liable to pay a fine or other sum of money, the Deputy Commissioner may, on the recommendation of a Council of Elders and on satisfying himself that such a course is in accordance with local tribal custom, by order, in writing, direct that the amount shall be recovered from the property, movable or immovable, of such of the relatives or fellow-tribesmen of the person so liable as may be specified in the order.

Power of Deputy Commissioner to order disposal of certain fines.

57. (*1*) The Deputy Commissioner may make such order as he thinks fit for the disposal of the proceeds of any fine imposed under Section 12, Section 18 or Section 22, and, subject to any order made by the Commissioner under Chapter VI, the proceeds shall be disposed of accordingly.

(*2*) Where, in pursuance of an order made under sub-section (*1*), a person has received compensation for an injury out of the proceeds of a fine, no Civil Court shall take cognizance of a claim to compensation based on the same injury.

Maintenance of registers.

58. Registers shall be kept up, in forms to be approved by the Local Government, of all cases dealt with by the Deputy Commissioner and by the Commissioner under this Regulation.

Jurisdiction of ordinary Courts in cases under Sections 29, 30 and 37.

59. An offence punishable under Section 29 or Section 30 may be tried by a Court of Session or by the Court of a Magistrate of the first class. An offence punishable under Section 37 may be tried by any Magistrate of the first class.

Finality of proceedings under Regulation.

60. Except as therein otherwise provided, no decision, decree, sentence or order given, passed or made, or act done, under Chapter III, Chapter IV, Chapter V or Chapter VI shall be called in question in, or set aside by, any Civil or Criminal Court.

Application of provisions of Indian Penal Code respecting fines and imprisonment.

61. The provisions of Section 61, and those of Sections 63 to 74, of the Indian Penal Code, XLV of 1860. shall, subject to the provisions of Section 13 of this Regulation, apply to sentences passed under this Regulation.

For rules framed under this section see pages 36, 39 and 40.

62. The Local Government may make rules to carry out the purposes and objects of this Regulation.

Power to make rules.

63. No suit or other legal proceeding shall lie against any person for anything done, or in good faith intended to be done, under this Regulation.

Protection for persons acting under Regulation.

V of 1887.

64. The Punjab Frontier Crimes Regulation, 1887, is hereby repealed.

Repeal.

THE FIRST SCHEDULE.

[*See Section 2, clause (b).*]

PART I.

Powers and functions with which Magistrates of the first class may be invested by Deputy Commissioners.

(*a*) In the case of an Additional District Magistrate—all or any of the powers and functions of a Deputy Commissioner.

(*b*) In any other case—all or any of the following powers, namely :—

(*i*) power to make orders of reference to Councils of Elders under Section 8, sub-section (*1*) ;

(*ii*) power to nominate and appoint the members of the Council when an order of reference to a Council has been made under Section 8, sub-section (*1*) ;

(*iii*) power to nominate the members of the Council when an order of reference to a Council has been made under Section 11, sub-section (*1*) ;

(*iv*) power to consider and dispose of objections made by an accused person to members so nominated, and to appoint the members of a Council of Elders under Section 1 sub-section (*2*) ; and

(*v*) power to take security under Section 40.

PART II.

Powers and functions with which Magistrates may be invested by the Local Government.

(*a*) Power to nominate and appoint the members of a Council of Elders where an order of reference to a Council has been made under Section 8, sub-section (*1*) ;

(*b*) Power to nominate the members of the Council when an order of reference to a Council has been made under Section 11, sub-section (*1*) ; and

(*c*) Power to consider and dispose of objection made by an accused person to members so nominated and to appoint the members of a Council of Elders under Section 11, sub-section (*2*).

THE SECOND SCHEDULE.

[*See Section 12, sub-section (2).*]

XLV of 1860.

1. Any offence punishable under any of the following sections of the Indian Penal Code, namely, Sections 121, 121-A, 122, 123, 124-A, 125, 126, 127, 131, 144, 148, 150, 193, 194, 195, 196, 201, 211, 212, 216, 216-A, 302, 304, 307, 308, 324, 325, 326, 328, 354, 363 to 369, 376, 377, 379 to 382, 386, 387, 392 to 399, 400, 401, 402, 411 to 414, 427 to 429, 435, 436, 440, 448 to 460, 494, 495, 497 and 498.

2. Any offence punishable under Section 29 or Section 30 of this Regulation.

3. Abetment of any of the offences aforesaid.

4. Attempt to commit any of the offences aforesaid, which are not themselves expressed to be attempts to commit offences.

APPENDIX IV (3).

The Frontier Murderous Outrages Regulation, 1901.

REGULATION NO. IV OF 1901.

[Received the assent of the Governor General on the 18th October, 1901 ; and published in the Gazette of India on the 26th idem.]

A REGULATION TO MAKE BETTER PROVISION FOR THE SUPPRESSION OF MURDEROUS OUTRAGES IN CERTAIN FRONTIER TRACTS.

Whereas it is expedient to make better provision for the suppression of murderous outrages in certain frontier tracts ; It is hereby enacted as follows :—

Short title, commencement and extent.

1. (*1*) This Regulation may be called the Frontier Murderous Outrages Regulation, 1901 ; and

(*2*) It shall come into force at once.

(*3*) Save as otherwise provided by section 6, sub-section (*2*), it extends only to the territories for the time being administered by the Chief Commissioner of British Baluchistan ; but the Local Government may, either of its own motion or at the request of the Judicial Commissioner, exempt any local area, or withdraw any case or class of cases, from the operation of all or any of its provisions.

Punishment of fanatic committing, or attempting to commit, murder.

2. (*1*) Any fanatic who, within the meaning of the Indian Penal Code, commits murder, XLV of 1860. or does any act with such intention or knowledge, and in such circumstances, that, if he by that act caused death, he would commit murder, shall be punishable with death or with transportation or imprisonment for life, and all his property shall be forfeited to the Government.

(*2*) Notwithstanding anything in section 393 of the Code of Criminal Procedure, 1898, or V of 1898. in any other enactment for the time being in force, where any such fanatic as aforesaid is sentenced to transportation or imprisonment for life, he may also be sentenced to whipping in addition to such transportation or imprisonment.

Forfeiture of property and disposal of body of fanatic killed in committing offence under section 2.

3. Where any fanatic is killed in the act of committing an offence punishable under section 2, or, having been wounded and arrested in the act of committing any such offence, afterwards dies of his wounds, the Court which, under the provisions of section 4, would have had cognizance of the offence if the offender could have been brought to trial, may proceed to hold an inquest into the circumstances of the death of the fanatic, and, on proof of his having been killed as aforesaid, or of his having died of wounds received as aforesaid, may adjudge that all his property shall be forfeited to the Government, and may dispose of his body as it may think fit.

Court before which offences punishable under section 2 to be tried.

4. (*1*) Any offence punishable under section 2 shall be tried by the Sessions Judge or Deputy Commissioner of the district in which it was committted :

Provided that the jurisdiction so conferred on the Sessions Judge or Deputy Commissioner may be exercised by any Magistrate of the first class whom the Local Government, or the Sessions Judge or Deputy Commissioner to whom such Magistrate is subordinate, may, after the commission of an offence punishable under section 2, specially invest with such jurisdiction for the purpose of trying such offence.

(*2*) In every trial held under this Regulation the Court shall follow the procedure for the trial of warrant-cases by Magistrates prescribed by Chapter XXI of the Code of Criminal Pro- V of 1898. cedure, 1898 :

Provided that, where the Court is of opinion that any witness or evidence is offered for the purpose of vexation or delay or of defeating the ends of justice, it may require the accused person to satisfy it that there are reasonable grounds for believing that such witness or evidence is material, and, where the Court is not so satisfied, it shall not be bound to summon the witness or examine the evidence so offered.

Trial to be with aid of assessors.

5. (*1*) Every trial held under this Regulation shall be conducted with the aid of two or more assessors as members of the Court.

(*2*) The Court may appoint such persons, other than persons specified in section 278 of the Code of Criminal Procedure, 1898, at such time, and in such manner, as it may think fit, to serve V of 1898. as assessors, and no persons shall be exempt, within the meaning of section 320 of the said Code, from liability to serve as such assessors.

(*3*) The provisions of the said Code shall, save as aforesaid, apply to assessors appointed under this section.

Contents of judgment and execution of sentence.

6. (*1*) When any trial held under this Regulation is concluded, if the accused person is convicted, it shall be sufficient if the Court, in passing judgment and recording the finding and sentence, specifies the offence of which he is convicted, and the Court shall immediately issue a

warrant to the officer in charge of the prison in which the prisoners is confined, or to which the Court has, by its judgment or by a subsequent order, directed him to be transferred for this purpose, to cause the sentence to be carried into execution, and the sentence shall be carried into execution, accordingly:

Provided that, where a sentence of death is passed, the Court may, from time to time, if it seems to it that the public interest so requires, extend the date fixed for the execution of the sentence, and the execution shall be postponed accordingly.

(2) The Court may, under sub-section (1), direct a prisoner to be transferred for the execution of a sentence passed upon him under this Regulation to any prison in British India, whether in the territories for the time being administered by the Chief Commissioner of British Baluchistan or not; and nothing in the Prisoners Act, 1900, or in any other enactment for the time being in force, shall be deemed to preclude the officer in charge of such prison from carrying such sentence into execution.

(3) Notwithstanding anything in the Code of Criminal Procedure, 1898, or in any other enactment for the time being in force, no sentence of death passed under this Regulation shall require confirmation by any Court.

Disposal of body of offender on execution of sentence of death passed under section 2.

7. When a sentence of death passed under section 2 has been carried into execution, the body of the offender shall be disposed of as the Court by which he was sentenced, shall direct.

Proceedings to be reported to Local Government.

8. The proceedings in every trial held under this Regulation shall, without unnecessary delay, be reported by the Court to the Local Government.

V of 1898.

No appeal from order or sentence under Regulation.

9. Notwithstanding anything in the Code of Criminal Procedure, 1898, or in any other enactment for the time being in force, no appeal shall lie from any order made or sentence passed under this Regulation.

Procedure where offence charged is not punishable under section 2.

XLV of 1860.

V of 1898.

10. Where the Court is of opinion that a person charged with an offence punishable under section 2 is not so punishable, but has committed an offence punishable under the Indian Penal Code, the accused person shall be dealt with in manner provided in such case by the Code of Criminal Procedure, 1898.

Power for Local Government to confine person charged with, or suspected of, offence punishable under section 2.

11. The Local Government shall have, with respect to the confinement of any person charged with, or suspected of an intention to commit, or abet the commission of, an offence punishable under section 2, the powers vested in the Governor General in Council by any law for the time being in force regarding the confinement of persons charged with, or suspected of, State offences; and the provisions of any such law shall, *mutatis mutandis*, be applicable in every case in which the Local Government proceeds under the authority of this section.

Detention of persons in anticipation of proceedings under section 11.

12. Any Magistrate of the first class may cause any person against whom there are, in his opinion, grounds for proceeding under section 11, to be arrested, and may, after such inquiry as he may think necessary, detain such person in safe custody until he has received the orders of the Local Government, to which he shall in every such case, without unnecessary delay, report his proceedings.

Arrest, etc., of persons suspected of intending to commit, or of habitually conniving at commission of, offences punishable under section 2.

13. (1) Any police-officer may, without an order from a Magistrate and without a warrant, arrest any person against whom credible information has been received, or a reasonable suspicion exists, that he is a person who intends to commit, or abet the commission of, an offence punishable under section 2, or who habitually protects or harbours fanatics committing such offences, or who orally or in writing counsels, or by approval encourages, the commission of such offences.

V of 1898.

(2) Any such person as aforesaid shall bede emed, within the meaning of clause (*f*) of section 110 of the Code of Criminal Procedure, 1898, to be so desperate and dangerous as to render his being at large without security hazardous to the community, and the provisions of Chapter VIII and of sections 406, 514 and 515 of the said Code shall apply to him, except in so far as is otherwise provided in this Regulation.

(3) Where a Magistrate makes in respect of such person as aforesaid an order in writing as prescribed by section 118 of the said Code, he may direct such person, during the whole or part of the period of the bond,—

(*a*) to reside beyond the limits of the territories to which this Regulation extends, or at such place within the said limits as may be specified in the order; and,

(*b*) if he is so directed to reside within the said limits, to notify his residence and every change of residence to such authority as may be specified in the order.

(*4*) Whoever, being bound over to be of good behaviour under this section, commits a breach of any direction under sub-section (*3*), shall be deemed to have forfeited his bond, and shall, in addition to any term of rigorous imprisonment to which he may be liable for breach of the conditions of his bond, be punishable with rigorous imprisonment for a term which may extend to one year, or with fine, or with both.

(*5*) Every order made under this section shall be at once reported to the Local Government, and the Local Government may revise any such order.

Further preventive and punitive measures.

14. (*1*) Where a fanatic has committed an offence punishable under section 2, the Court, may, on the recommendation of a Council of Elders or after such inquiry as it may think necessary, take any of the following measures against any community, section of a community or individual with whom such fanatic is or has been associated in circumstances which satisfy the Court that, by reasonable prudence or diligence on the part of such community, section of a community or individual, the commission or attempted commission of such offence might have been prevented, namely :—

(*a*) it may impose a fine on such community, section of a community or individual and recover the same as if it were an arrear of land-revenue ; or

(*b*) it may direct that such community, section of a community or individual shall forfeit, in whole or in part and for a term or in perpetuity, any assignment or remission of land-revenue or allowance payable out of public funds of which it or he may be in enjoyment.

(*2*) No order made under this section shall take effect until it has been confirmed by the Local Government.

(*3*) Nothing in this section shall affect the powers of the Local Government with respect to the grant, continuance or forfeiture, in whole or in part, of any assignment or remission of land-revenue or of any allowance payable out of public funds.

Explanation.—In sub-section (*1*), the expression " Council of Elders " means a Council of three or more persons convened according to the Pathan, Biluch or other usage, as the Court may in each case direct.

Power for Local Government to issue circular orders.

15. The Local Government may, by notification in the official Gazette, make and issue circular orders for the guidance of officers in carrying out the purposes and objects of this Regulation ; and every circular order so made and issued shall have effect as if enacted in this Regulation.

Repeals.

16. Act XXIII of 1867 (*an Act for the suppression of murderous outrages in certain Districts of the Punjab*), *Act IX of 1877* (*an Act to revive and amend Act No. XXIII of 1867*), and so much XVI of 1874. I of 1890. of the Repealing Act, 1874, of the Baluchistan Laws Regulation, 1890, and of the Repealing and Amending Act, 1891, as relates to the said Act XXIII of 1867, are hereby repealed in the territories to which this Regulation extends. XII of 1891.

APPENDIX IV (4).

The N. W. F. P. Security Regulation, 1922.

REGULATION No. IV OF 1922.

[*Received the assent of the Governor General on the 7th March, 1922 ; and published in the Gazette of India Extraordinary on the 8th March, 1922.*]

A REGULATION TO CONTINUE IN FORCE CERTAIN PROVISIONS OF THE EXISTING LAW FOR THE PURPOSE OF SECURING THE PEACE AND SAFETY OF THE NORTH-WEST FRONTIER PROVINCE.

Whereas it is expedient that certain provisions of the existing law should continue to be in force for the purpose of securing the peace and safety of the North-West Frontier Province ; It is hereby enacted as follows :—

Short title, extent, commencement and duration.

1. (*1*) This Regulation may be called the North-West Frontier Province Security Regulation, 1922.

(*2*) It extends to the North-West Frontier Province.

(*3*) It shall come into force on such date as the Governor General may, by notification in the Gazette of India, appoint, and shall remain in force for a period of three years thereafter.

Definition.

2. In this Regulation, unless there is anything repugnant in the subject or context,—

(*a*) " area " means an area forming part of the Province ;

(*b*) " Chief Commissioner " means the Chief Commissioner of the North-West Frontier Province ; and

(*c*) " the Province " means the North-West Frontier Province.

Powers to deal with suspects.

3. Where in the opinion of the Chief Commissioner there are reasonable grounds for believing that any person has acted, is acting, or is about to act, in a manner prejudicial to the peace and good government of the Province, the Chief Commissioner may, by order in writing, direct that such person—

(*a*) shall not enter the Province ; or

(*b*) shall not enter, reside or remain in any area specified in the order ; or

(*c*) shall reside or remain in any area so specified ; or

(*d*) shall conduct himself in such a manner or abstain from such acts or take such order with any property in his possession or under his control as may be specified in such order ; or

(*e*) shall remove himself from the Province in such manner and by such route and means as may be specified in such order, and shall not return thereto.

Service of orders under section 3.

4. (*1*) An order made under clause (*a*) of section 3 shall be served by post upon the person in respect of whom it is made.

(*2*) An order made under clause (*b*), clause (*c*), clause (*d*) or clause (*e*) of section 3 shall be served on the person in respect of whom it is made in the manner provided in the Code of

V of 1898. Criminal Procedure, 1898, for service of a summons.

(*3*) Any person upon whom an order has been served in accordance with the provisions of this section shall be deemed to have had due notice of such order.

Enforcement of orders.

5. The Chief Commissioner and any officer subordinate to him to whom a copy of any order made under section 3 has been endorsed by or under the general or special authority of the Chief Commissioner may use any and every means necessary to enforce compliance with the same.

Penalty for breach of orders under section 3.

6. Whoever, being a person in respect of whom an order has been made under section 3, knowingly disobeys any direction in such order may be arrested without warrant, and shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

Power of photographing, etc., persons against whom orders under section 3 have been made.

7. (*1*) Every person in respect of whom an order has been made under clause (*b*), clause (*c*), clause (*d*) or clause (*e*) of section 3 shall, if so directed by any officer authorised in this behalf by general or special order of the Chief Commissioner,—

(*a*) permit himself to be photographed ;

(*b*) allow his finger impressions to be taken ;

(*c*) furnish such officer with specimens of his handwriting and signature ; and

(*d*) attend at such times and places as such officer may direct for all or any of the foregoing purposes.

(*2*) If any person fails to comply with or attempts to evade any directions given in accordance with the provisions of this section, he may be arrested without warrant and shall be punishable with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Powers of search.

8. The power to issue search warrants conferred by section 98 of the Code of Criminal

V of 1898. Procedure, 1898, shall be deemed to include the power to issue warrants authorising the search of any place in which any Magistrate mentioned in that section has reason to believe that an offence under this Regulation or any offence prejudical to the peace or good government of the Province has been or is being or is about to be committed, and the seizure of anything found therein or thereon which the officer executing the warrant has reason to believe is being used or is intended to be used for any such purpose as aforesaid, and the provisions of the said Code, as far as they can be made applicable, shall apply to searches made under the authority of any warrant issued under this section and to the disposal of any property seized in any such search.

APPENDIX IV (5).

The N. W. F. P. Public Safety Regulation, 1931.

REGULATION No. III OF 1931.

[*Received the assent of the Governor General on the 21st January, 1931 ; and published in the Gazette of India on the 24th January, 1931.*]

A REGULATION TO MAKE PROVISION FOR SAFEGUARDING THE PUBLIC SAFETY IN THE NORTH-WEST FRONTIER PROVINCE.

Whereas it is expedient to make provision for safeguarding the public safety in the North-West Frontier Province; It is hereby enacted as follows :—

Short title, duration and extent.

1. (*1*) This Regulation may be called the North-West Frontier Province Public Safety Regulation, 1931.

(2) It shall remain in force for the period of one year only ;

Provided that the Governor General in Council may, by notification in the Gazette of India, direct that it shall remain in force for one further period not exceeding one year.

(3) It extends to the whole of the North-West Frontier Province, but shall have effect only in such areas as the Chief Commissioner may, by notification in the North-West Frontier Province Gazette stating his reasons, specify in this behalf.

(4) A notification under sub-section (3) shall remain in force for such period not exceeding two months as may be specified therein :

Provided that the Chief Commissioner may, by notification in the North-West Frontier Province Gazette, direct that any such notification shall remain in force for one further period not exceeding two months, and thereafter, with the previous sanction of the Governor General in Council, may, from time to time, in like manner, direct that it shall remain in force for a further period not exceeding two months.

Competent authorities.

2. (1) The Chief Commissioner shall be competent authority for all the purposes of this Regulation.

(2) The Chief Commissioner may, by notification in the North-West Frontier Province Gazette, appoint any civil or military officer to be a competent authority for any or all of the purposes of this Regulation in any area specified in such notification.

Power to take temporary possession of land and otherwise to take order with property.

3. (1) Where, in the opinion of a competent authority, such action is necessary for the purpose of securing the public safety, such competent authority may, after recording an order in writing stating his reasons,—

(a) take temporary possession of any land, and construct military works, including roads, thereon, and remove any trees, hedges, crops and defences therefrom ;

(b) take temporary possession of any buildings or other property, whether moveable or immoveable, including works for the supply of electricity or water and any source of water supply ;

(c) take such steps as may be expedient for placing any lands, buildings or structures, in a state of defence ;

(d) cause any buildings, structures, trees, hedges, crops or other property of any kind to be destroyed or removed ; and

(e) do any other act involving interference with private rights in property.

(2) Where any person has suffered loss by the exercise of any power conferred by sub-section (1), he may apply to the Deputy Commissioner for compensation, and the Deputy Commissioner shall pay to such person such compensation, either in a gross sum of money or by monthly or other periodical payments, or both, as shall be agreed upon in writing between the Deputy Commissioner and such person.

(3) Where the Deputy Commissioner and the person claiming differ as to the sufficiency of the compensation, or where any dispute arises as to the apportionment of the compensation, the Deputy Commissioner shall refer the difference or dispute to the decision of the District Court.

(4) An appeal shall lie to the Court of the Judicial Commissioner against a decision of the District Court under sub-section (3).

(5) The Chief Commissioner may authorise any Additional District Magistrate or Sub-Divisional Officer to exercise the powers of a Deputy Commissioner under sub-sections (2) and (3).

Power to take possession of immoveable property with a view to permanent possession.

4. (1) Where it appears to a competent authority that any immoveable property is likely to be needed for any public purpose connected with the defence of the North-West Frontier Province, and, in the opinion of such authority, it is necessary for the purpose of securing the public safety to take immediate possession of such property, then, notwithstanding anything contained in the Land Acquisition Act, 1894, the competent authority may, after recording an order in writing stating his reasons, enter upon and take possession of such property, before any notification is issued, declaration is made, objection is raised, or award of compensation is made under that Act. I of 1894.

(2) Where the competent authority so taking possession is not the Chief Commissioner, he shall report his action to the Chief Commissioner.

(3) As soon as may be after possession of any immoveable property is taken under this section, or where possession of immoveable property has been taken under section 3 and the Chief Commissioner decides to acquire such property permanently, the Chief Commissioner shall issue a notification under section 4 of the Land Acquisition Act, 1894, and thereafter the property shall be acquired in accordance with the provisions of that Act, in so far as they are not inconsistent with this section or with section 3. I of 1894.

Rights of access to land, etc.

5. A competent authority may, after recording an order in writing stating his reasons, enter upon any land, buildings or other property.

Power to close roads.

6. Where, in the opinion of a competent authority, such action is necessary for the purpose of securing the public safety, such competent authority may close or divert any road or pathway:

Provided that the competent authority shall—

(*a*) give notice in writing of such action to the local authority (if any) in whose charge such road or pathway is ; and

(*b*) restore any such road or pathway to its original use and condition as soon as the necessities of the case permit this to be done.

Power to require the showing of distinguishing marks by day and the carrying of lights by night.

7. (*1*) Where, in the opinion of a competent authority, such action is necessary for the purpose of securing the public safety, such competent authority may require that persons moving about in any locality shall show prescribed distinguishing marks by day and shall carry lights by night.

(*2*) The competent authority shall publish notice of such requirements in the said locality in such manner as he may consider best adapted for informing the public thereof.

(*3*) Whoever contravenes any requirement made and published under this section shall be punishable with imprisonment which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

Bar of jurisdiction.

8. Save as provided in this Regulation, no order under this Regulation shall be called in question in any Court, and no suit, prosecution or other legal proceeding shall lie against any person for anything done or in good faith intended to be done under this Regulation.

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